

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

FORM 8-K

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

Date of Report (Date of earliest event reported): **May 29, 2020**

GENMARK DIAGNOSTICS, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-34753
(Commission File Number)

27-2053069
(I.R.S. Employer
Identification No.)

5964 La Place Court
Carlsbad, California 92008
(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code: **(760) 448-4300**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	GNMK	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 Selection 13(a) of the Exchange Act.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On June 1, 2020, GenMark Diagnostics, Inc. (the “Company”) and Scott Mendel entered into an amended and restated executive employment agreement (the “Agreement”), which amends and restates that certain executive employment agreement by and between the Company and Mr. Mendel dated as of February 27, 2020 (the “Prior Agreement”). Pursuant to the Agreement, Mr. Mendel will serve as the Company’s President and Chief Executive Officer commencing on May 2, 2020. In addition, the Agreement provides the following benefits for Mr. Mendel:

- Mr. Mendel will receive an annual base salary of \$515,000;
- Mr. Mendel’s target bonus under the Company’s 2020 bonus plan (and any future bonus plan) will equal 75% of his annual base salary; and
- Mr. Mendel will be granted an additional 50,000 restricted stock units (the “New RSUs”) under Company’s 2020 Equity Incentive Plan (the “2020 Plan”), which shall vest according to the following schedule: 25% of the New RSUs will vest immediately as of the first anniversary of the grant date, and the remaining 75% of the New RSUs will then vest in equal installments each quarter thereafter over the next twelve (12) quarters, subject to Mr. Mendel’s continuous employment with the Company on such dates, except as set forth in the Agreement and in the Amendment of Restricted Stock Unit and/or Stock Option Agreement(s) signed in connection with the Agreement (the “RSU Amendment”).

The Agreement also provides that, if Mr. Mendel’s employment is terminated without Cause (as defined within the Company’s Executive Severance Plan (the “Severance Plan”)), or is terminated by Mr. Mendel for Good Reason (as defined within the Severance Plan) (in each case, a “Qualifying Termination”), Mr. Mendel would receive: (a) a gross lump sum payment equal to twelve (12) months of Mr. Mendel’s base salary rate in effect as of the date of his Qualifying Termination, (b) 100% of Mr. Mendel’s target bonus amount under the Company’s bonus plan, (c) the acceleration and full vesting and settlement of (i) the 225,000 restricted stock units and 75,000 market-based stock units granted to Mr. Mendel under the Company’s 2010 Equity Incentive Plan pursuant to the Prior Agreement, and (ii) the New RSUs, and (d) continued healthcare coverage under the Company’s health benefits then in effect for a period of twelve (12) months. In addition to the foregoing benefits, if Mr. Mendel’s Qualifying Termination occurs on or prior to February 28, 2021, Mr. Mendel would also receive the acceleration and full vesting and settlement of any other equity awards held by Mr. Mendel which would otherwise vest on or prior to February 28, 2021 but for Mr. Mendel’s Qualifying Termination.

The foregoing description of Mr. Mendel’s compensation arrangements is qualified in its entirety by reference to the full text of the Agreement, the form of Restricted Stock Units Agreement under the 2020 Plan, and the RSU Amendment, each of which is filed as an Exhibit with this Current Report on Form 8-K, as well as the Severance Plan filed as an Exhibit to the Company’s Quarterly Report on Form 10-Q filed on November 6, 2019.

Item 5.07. Submission of Matters to a Vote of Security Holders.

The Company held its 2020 Annual Meeting of Stockholders on May 29, 2020 (the “Annual Meeting”), at which a total of 53,137,319 shares of the Company’s common stock, or approximately 87% of the shares entitled to vote, were represented in person or by valid proxies. A description of each matter voted upon at the Annual Meeting is described in detail in the Company’s definitive proxy statement filed with the Securities and Exchange Commission on April 15, 2020. Set forth below are final voting results for the four proposals that were subject to a vote of the Company’s stockholders at the Annual Meeting.

1. For the proposal to elect two nominees for director to serve a three-year term expiring at the Company’s 2023 Annual Meeting of Stockholders, the voting results were as follows:

<u>Name of Directors Elected</u>	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
Daryl J. Faulkner	36,543,654	3,687,824	656,336	12,249,505
James Fox, Ph.D.	39,581,575	514,581	791,658	12,249,505

The following individuals are continuing directors with terms expiring at the Company’s 2021 Annual Meeting of Stockholders: Scott Mendel and Kevin C. O’Boyle.

The following individuals are continuing directors with terms expiring at the Company's 2022 Annual Meeting of Stockholders: Lisa M. Giles and Michael S. Kagnoff.

2. For the proposal to ratify Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2020, the voting results were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>
52,361,954	98,234	677,131

3. For the proposal to approve, on an advisory basis, the compensation of the Company's named executive officers, the voting results were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
39,086,718	1,172,803	628,293	12,249,505

4. For the proposal to approve the 2020 Plan, the voting results were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
37,140,138	3,206,789	540,887	12,249,505

No other matters were presented for stockholder approval at the Annual Meeting.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 99.1 Amended and Restated Executive Employment Agreement dated as of June 1, 2020 by and between GenMark Diagnostics, Inc. and Scott Mendel.
- 99.2 Form of Restricted Stock Units Agreement under the 2020 Plan.
- 99.3 Amendment of Restricted Stock Unit And/Or Stock Option Agreement(s).

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 hereunto duly authorized.

GENMARK DIAGNOSTICS, INC.

Date: June 2, 2020

/s/ Eric Stier

Eric Stier

Senior Vice President, General Counsel and Secretary

EXHIBITS

Exhibit Number	Description
99.1	Amended and Restated Executive Employment Agreement dated as of June 1, 2020 by and between GenMark Diagnostics, Inc. and Scott Mendel.
99.2	Form of Restricted Stock Units Agreement under the 2020 Plan.
99.3	Amendment of Restricted Stock Unit And/Or Stock Option Agreement(s).

AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This Amended and Restated Executive Employment Agreement (“Agreement”) is made by and between GenMark Diagnostics, Inc. (“Company”) and Scott Mendel (“Executive”) upon execution by Company.

Executive has been employed by Company as its interim President and Chief Executive Officer pursuant to that certain Executive Employment Agreement dated as of February 27, 2020 (the “**Prior Agreement**”), and Company and Executive have agreed to amend and restate the Prior Agreement as set forth in this Agreement.

The parties agree as follows:

1. **Effective Date.** Executive’s position was changed to President and Chief Executive Officer commencing on May 2, 2020 (“Start Date”). As of the Start Date, Company hereby employs Executive, and Executive hereby accepts such employment, upon the terms and conditions set forth herein, which supersedes the terms of the Prior Agreement and Executive’s offer letter of employment with Company dated May 6, 2014.

2. **Duties.**

2.1 **Position.** Executive shall have the duties and responsibilities assigned by Company’s Board of Directors (“Board of Directors”) both upon the Start Date and as may be reasonably assigned from time to time. Executive shall perform faithfully and diligently all duties assigned to Executive. Company reserves the right to modify Executive’s position and duties at any time in its sole and absolute discretion, provided that the duties assigned are consistent with the position of a senior executive and that Executive continues to report to Company’s Board of Directors.

2.2 **Best Efforts/Full-time.** Executive will expend Executive’s best efforts on behalf of Company, and will abide by all policies and decisions made by Company, as well as all applicable federal, state and local laws, regulations or ordinances. Executive will act in the best interest of Company at all times. Executive shall devote Executive’s full business time and efforts to the performance of Executive’s assigned duties for Company, unless Executive notifies the Board of Directors in advance of Executive’s intent to engage in other paid work and receives the Board of Directors’ express written consent to do so.

2.3 **Work Location.** Executive’s principal place of work shall be located in Carlsbad, California, or such other location as Company may direct from time to time.

3. **At-Will Employment.** Executive’s employment with Company is at-will and not for any specified period and may be terminated at any time, with or without cause or advance notice, by either Executive or Company. No representative of Company, other than the Board of Directors, has the authority to alter the at-will employment relationship. Any change to the at-will employment relationship must be by specific, written agreement signed by Executive and Company’s Board of Directors. Nothing in this Agreement is intended to or should be construed to contradict, modify or alter this at-will relationship.

4. **Compensation.**

4.1 **Base Salary.** As compensation for Executive’s performance of Executive’s duties hereunder, Company shall pay to Executive an initial base salary of Five Hundred Fifteen Thousand Dollars (\$515,000) on an annualized basis (the “Base Salary”) payable in accordance with the normal payroll practices of Company, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions. In the event Executive’s employment under this Agreement is terminated by either party, for any reason, Executive will earn the Base Salary prorated to the date of termination.

4.2 **Incentive Compensation.** During the period Executive is employed with Company, Executive will be eligible to participate in Company’s performance incentive compensation bonus program for an annual bonus of up to 75% of Base Salary (“Target Bonus”). Whether or not Executive earns any bonus will be dependent upon (a) Executive’s continuous performance of services to Company through the date any bonus is paid; and (b) the actual achievement by Executive and Company of the applicable performance targets and goals set by the Compensation Committee of the Board of Directors. The Compensation Committee of the Board of Directors will determine in its sole discretion the extent to which Executive and Company have achieved the performance goals upon which the bonus is based and the amount of the bonus. Any bonus shall be subject to the terms of any applicable performance incentive compensation plan adopted by Company. Any bonus, if earned, will be paid to Executive within the time period set forth in the incentive compensation plan, less standard federal and state payroll withholding requirements, or if no such time period was established, within two and one-half months following the end of the year during which the bonus is earned.

4.3 Restricted Stock Units. Executive will be granted an additional 50,000 Restricted Stock Units (“RSU”) under Company’s 2020 Equity Incentive Plan (“EIP”). The RSU will be subject to the terms and conditions of the EIP and the standard restricted stock unit agreement provided pursuant to the EIP, which Executive will be required to sign as a condition of receiving the RSU. The RSU shall vest according to the following schedule: 25% will vest immediately as of the first anniversary of the date of grant, and the remaining 75% of the shares will then vest in equal installments each quarter thereafter over the next twelve (12) quarters, subject to continuous employment with Company on such dates, except as set forth in Section 7.1 below and in the Amendment of Restricted Stock Unit and/or Stock Option Agreements signed contemporaneous with this Agreement (“RSU Amendment”).

4.4 Performance and Salary Review. The Board of Directors will periodically review Executive’s performance on no less than an annual basis. Adjustments to salary or other compensation, if any, will be made by the Board of Directors in its sole and absolute discretion.

5. Customary Fringe Benefits. Executive will be eligible to participate on the same basis as similarly situated employees in Company’s benefit plans in effect from time to time during Executive’s employment. All matters of eligibility for coverage or benefits under any benefit plan shall be determined in accordance with the provisions of such plan. Company reserves the right to change or eliminate benefits on a prospective basis, at any time, effective upon notice to Executive.

6. Business Expenses. Executive will be reimbursed for all reasonable, out-of-pocket business expenses incurred in the performance of Executive’s duties on behalf of Company. To obtain reimbursement, expenses must be submitted promptly with appropriate supporting documentation and will be reimbursed in accordance with Company’s policies. Any reimbursement Executive is entitled to receive shall (a) be paid no later than the last day of Executive’s tax year following the tax year in which the expense was incurred, (b) not be affected by any other expenses that are eligible for reimbursement in any tax year and (c) not be subject to liquidation or exchange for another benefit.

7. Termination of Executive’s Employment.

7.1 Severance. Executive shall be eligible to participate in the GenMark Diagnostics, Inc. Executive Severance Plan (“Plan”) pursuant to the terms and conditions set forth in the Plan and the Amended and Restated Agreement to Participate in the GenMark Diagnostics, Inc. Executive Severance Plan executed by the parties on February 10, 2020 (“Participation Agreement”). In addition to the severance payments and benefits set forth in the Plan, in the event of Executive’s Qualifying Termination (as defined in the Plan), subject to the terms and conditions of the Plan (including, without limitation, the requirements to execute a Release on or before the Release Deadline Date (as such terms are defined in the Plan)), Company shall (a) pay Executive an amount equal to the Target Bonus, which shall be paid in cash in a single lump sum within thirty (30) days following the effective date of the Release, subject to Section 8 of the Plan; and (b) accelerate in full the vesting and settlement of the 225,000 RSU and the 75,000 Market-Based Stock Units granted on February 25, 2020 in connection with the Prior Agreement and the new 50,000 RSU granted pursuant to Section 4.3 above effective immediately on the Termination Date (as defined in the Plan), notwithstanding the terms of the Plan and the applicable RSU and MSU agreements; and (c) if the Termination Date occurs prior to February 28, 2021, accelerate the portion of all Equity Awards (as defined in the EIP or Company’s 2010 Equity Incentive Plan (the “2010 EIP”), as applicable) that were granted to Executive prior to the effective date of this Agreement (the “Prior Awards”) that would have become vested, exercisable and subject to settlement (as applicable) if Executive had remained employed through February 28, 2021, notwithstanding the terms of the EIP or the 2010 EIP and the applicable award agreement(s). For the avoidance of doubt, any unvested performance period(s) of the MSU and/or any other Prior Awards that comprise market-based stock units held by Executive as of the Termination Date, in each case which may become subject to acceleration pursuant to this Section 7.1, shall vest in such circumstances at target level performance with respect to such performance period(s) and specifically exclude any potential “catch up” applicable thereto.

7.2. Resignation of Other Positions. Should Executive’s employment terminate for any reason, Executive agrees to immediately resign all other positions (including board membership) Executive may hold on behalf of Company, and take all necessary action to accomplish such resignation.

8. No Conflict of Interest. During the term of Executive’s employment with Company, Executive must not engage in any work, paid or unpaid, or other activities that create a conflict of interest. Such work and/or activities shall include, but is not limited to, directly or indirectly competing with Company in any way, or acting as an officer, director, employee, consultant, stockholder, volunteer, lender, or agent of any business enterprise of the same nature as, or which is in direct competition with, the business in which Company is now engaged or in which Company becomes engaged during the term of Executive’s employment with Company, as may be determined by Company Board of Directors in its sole discretion. If Company’s Board of Directors believes such a conflict exists during the term of this Agreement, the Board of Directors may ask Executive to choose to discontinue the other work and/or activities or resign employment with Company.

9. Confidentiality and Proprietary Rights. Executive and Company have previously entered into the Confidentiality and Non-Disclosure Agreement upon the commencement of Executive's employment with Company, which is incorporated herein by reference and will continue to remain in full force and effect. Executive agrees to continue to comply with the terms of the Confidentiality and Non-Disclosure Agreement.

10. Injunctive Relief. Executive acknowledges that Executive's breach of the covenants contained in Sections 8-9 (collectively "Covenants") would cause irreparable injury to Company and agrees that in the event of any such breach, Company shall be entitled to seek temporary, preliminary and permanent injunctive relief without the necessity of proving actual damages or posting any bond or other security.

11. General Provisions.

11.1 Successors and Assigns. The rights and obligations of Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Company. Executive shall not be entitled to assign any of Executive's rights or obligations under this Agreement.

11.2 Waiver. Either party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Agreement.

11.3 Attorneys' Fees. Each side will bear its own attorneys' fees in any dispute unless a statutory section at issue, if any, authorizes the award of attorneys' fees to the prevailing party.

11.4 Severability. In the event any provision of this Agreement is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

11.5 Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing Company, but Executive has participated in the negotiation of its terms. Furthermore, Executive acknowledges that Executive has had an opportunity to review and revise the Agreement and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

11.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California. Each party consents to the jurisdiction and venue of the state or federal courts in San Diego, California, if applicable, in any action, suit, or proceeding arising out of or relating to this Agreement.

11.7 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing.

11.8. Survival. Sections 8 ("No Conflict of Interest"), 9 ("Confidentiality and Proprietary Rights"), 100 ("Injunctive Relief"), 11 ("General Provisions") and 122 ("Entire Agreement") of this Agreement shall survive Executive's employment by Company.

12. Entire Agreement. This Agreement, including Company's Confidentiality and Non-Disclosure Agreement incorporated herein by reference, the Plan and Participation Agreement, the EIP, the 2010 EIP, and related RSU and MSU documents described in Section 4.3 of this Agreement and the Prior Agreement, the amendments thereto dated July 25, 2016, and the RSU Amendment, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This agreement may be amended or modified only with the written consent of Executive and the Board of Directors of Company. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

THE PARTIES TO THIS AGREEMENT HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN. WHEREFORE, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: 6/1/2020

/s/ Scott Mendel

Scott Mendel

GenMark Diagnostics, Inc.

Dated: 6/1/2020

/s/ Johnny Ek

Chief Financial Officer

GENMARK DIAGNOSTICS, INC.
RESTRICTED STOCK UNITS AGREEMENT
(For U.S. Participants)

GenMark Diagnostics, Inc. has granted to the Participant named in the *Notice of Grant of Restricted Stock Units* (the “**Grant Notice**”) to which this Restricted Stock Units Agreement (the “**Agreement**”) is attached an Award consisting of Restricted Stock Units (each a “**Unit**”) subject to the terms and conditions set forth in the Grant Notice and this Agreement. The Award has been granted pursuant to and shall in all respects be subject to the terms and conditions of the GenMark Diagnostics, Inc. 2020 Equity Incentive Plan (the “**Plan**”), as amended to the Date of Grant, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Agreement, the Plan and a prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of the shares issuable pursuant to the Award (the “**Plan Prospectus**”), (b) accepts the Award subject to all of the terms and conditions of the Grant Notice, this Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Agreement or the Plan.

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

2. ADMINISTRATION.

All questions of interpretation concerning the Grant Notice, this Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Award shall be determined by the Committee. All such determinations by the Committee shall be final, binding and conclusive upon all persons having an interest in the Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or the Award or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest in the Award. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, or election.

3. THE AWARD.

3.1 **Grant of Units.** On the Date of Grant, the Participant shall acquire, subject to the provisions of this Agreement, the Total Number of Units set forth in the Grant Notice, subject to adjustment as provided in Section 9. Each Unit represents a right to receive on a date determined in accordance with the Grant Notice and this Agreement one (1) share of Stock.

3.2 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Units or shares of Stock issued upon settlement of the Units, the consideration for which shall be past services actually rendered or future services to be rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock issued upon settlement of the Units.

4. VESTING OF UNITS.

Units acquired pursuant to this Agreement shall become Vested Units as provided in the Grant Notice. For purposes of determining the number of Vested Units following an Ownership Change Event, credited Service shall include all Service with any corporation which is a Participating Company at the time the Service is rendered, whether or not such corporation is a Participating Company both before and after the Ownership Change Event.

5. **COMPANY REACQUISITION RIGHT.**

- 5.1 **Grant of Company Reacquisition Right.** Except to the extent otherwise provided by the Superseding Agreement, if any, in the event that the Participant's Service terminates for any reason or no reason, with or without cause, the Participant shall forfeit and the Company shall automatically reacquire all Units which are not, as of the time of such termination, Vested Units ("**Unvested Units**"), and the Participant shall not be entitled to any payment therefor (the "**Company Reacquisition Right**").
- 5.2 **Ownership Change Event, Non-Cash Dividends, Distributions and Adjustments.** Upon the occurrence of an Ownership Change Event, a dividend or distribution to the stockholders of the Company paid in shares of Stock or other property, or any other adjustment upon a change in the capital structure of the Company as described in Section 9, any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) to which the Participant is entitled by reason of the Participant's ownership of Unvested Units shall be immediately subject to the Company Reacquisition Right and included in the terms "Units" and "Unvested Units" for all purposes of the Company Reacquisition Right with the same force and effect as the Unvested Units immediately prior to the Ownership Change Event, dividend, distribution or adjustment, as the case may be. For purposes of determining the number of Vested Units following an Ownership Change Event, dividend, distribution or adjustment, credited Service shall include all Service with any corporation which is a Participating Company at the time the Service is rendered, whether or not such corporation is a Participating Company both before and after any such event.

6. **SETTLEMENT OF THE AWARD.**

- 6.1 **Issuance of Shares of Stock.** Subject to the provisions of Section 6.3, the Company shall issue to the Participant on the Settlement Date with respect to each Vested Unit to be settled on such date one (1) share of Stock. The Settlement Date with respect to a Unit shall be the date on which such Unit becomes a Vested Unit as provided by the Grant Notice (an "**Original Settlement Date**"); provided, however, that if the tax withholding obligations of a Participating Company, if any, will not be satisfied by the share withholding method described in Section 7.3 and the Original Settlement Date would occur on a date on which a sale by the Participant of the shares to be issued in settlement of the Vested Units would violate the Trading Compliance Policy of the Company, then the Settlement Date for such Vested Units shall be deferred until the next day on which the sale of such shares would not violate the Trading Compliance Policy, but in any event on or before the 15th day of the third calendar month following calendar year of the Original Settlement Date. Shares of Stock issued in settlement of Units shall not be subject to any restriction on transfer other than any such restriction as may be required pursuant to Section 6.3, Section 7 or the Company's Trading Compliance Policy.
- 6.2 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit any or all shares acquired by the Participant pursuant to the settlement of the Award with the Company's transfer agent, including any successor transfer agent, to be held in book entry form, or to deposit such shares for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice. Except as provided by the foregoing, a certificate for the shares acquired by the Participant shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.
- 6.3 **Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of shares of Stock upon settlement of the Award shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. No shares of Stock may be issued hereunder if the issuance of such shares would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any shares subject to the Award shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of the Award, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

6.4 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the settlement of the Award.

7. **TAX WITHHOLDING.**

- 7.1 **In General.** At the time the Grant Notice is executed, or at any time thereafter as requested by a Participating Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax (including any social insurance) withholding obligations of the Participating Company, if any, which arise in connection with the Award, the vesting of Units or the issuance of shares of Stock in settlement thereof. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company have been satisfied by the Participant.
- 7.2 **Assignment of Sale Proceeds.** Subject to compliance with applicable law and the Company's Trading Compliance Policy, if permitted by the Company, the Participant may satisfy the Participating Company's tax withholding obligations in accordance with procedures established by the Company providing for delivery by the Participant to the Company or a broker approved by the Company of properly executed instructions, in a form approved by the Company, providing for the assignment to the Company of the proceeds of a sale with respect to some or all of the shares being acquired upon settlement of Units.
- 7.3 **Withholding in Shares.** The Company shall have the right, but not the obligation, to require the Participant to satisfy all or any portion of a Participating Company's tax withholding obligations by deducting from the shares of Stock otherwise deliverable to the Participant in settlement of the Award a number of whole shares having a fair market value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates if required to avoid liability classification of the Award under generally accepted accounting principles in the United States.

8. **EFFECT OF CHANGE IN CONTROL.**

In the event of a Change in Control, the Award shall be subject to the definitive agreement entered into by the Company in connection with the Change in Control. Except to the extent that the Committee determines to cash out the Award in accordance with Section 13.1(c) of the Plan, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the "**Acquiror**"), may, without the consent of the Participant, assume or continue in full force and effect the Company's rights and obligations under all or any portion of the outstanding Units or substitute for all or any portion of the outstanding Units substantially equivalent rights with respect to the Acquiror's stock. For purposes of this Section, a Unit shall be deemed assumed if, following the Change in Control, the Unit confers the right to receive, subject to the terms and conditions of the Plan and this Agreement, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Stock); provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon settlement of the Unit to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. The Award shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control to the extent that Units subject to the Award are neither assumed or continued by the Acquiror in connection with the Change in Control nor settled as of the time of the Change in Control.

9. **ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company and the requirements of Section 409A of the Code to the extent applicable, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number of Units subject to the Award and/or the number and kind of shares or other property to be issued in settlement of the Award, in order to prevent dilution or enlargement of the Participant's rights under the Award. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) to which the Participant is entitled by reason of ownership of Units acquired pursuant to this Award will be immediately subject to the provisions of this Award on the same basis as all Units originally acquired hereunder. Any fractional Unit or share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Committee, and its determination shall be final, binding and conclusive.

10. **RIGHTS AS STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.**

The Participant shall have no rights as a stockholder with respect to any shares which may be issued in settlement of this Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service at any time.

11. LEGENDS.

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to this Award in the possession of the Participant in order to carry out the provisions of this Section.

12. COMPLIANCE WITH SECTION 409A.

It is intended that any election, payment or benefit which is made or provided pursuant to or in connection with this Award that may result in Section 409A Deferred Compensation shall comply in all respects with the applicable requirements of Section 409A (including applicable regulations or other administrative guidance thereunder, as determined by the Committee in good faith) to avoid the unfavorable tax consequences provided therein for non-compliance. In connection with effecting such compliance with Section 409A, the following shall apply:

12.1 Separation from Service; Required Delay in Payment to Specified Employee. Notwithstanding anything set forth herein to the contrary, no amount payable pursuant to this Agreement on account of the Participant's termination of Service which constitutes a "deferral of compensation" within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code (the "**Section 409A Regulations**") shall be paid unless and until the Participant has incurred a "separation from service" within the meaning of the Section 409A Regulations. Furthermore, to the extent that the Participant is a "specified employee" within the meaning of the Section 409A Regulations as of the date of the Participant's separation from service, no amount that constitutes a deferral of compensation which is payable on account of the Participant's separation from service shall be paid to the Participant before the date (the "**Delayed Payment Date**") which is the first day of the seventh month after the date of the Participant's separation from service or, if earlier, the date of the Participant's death following such separation from service. All such amounts that would, but for this Section, become payable prior to the Delayed Payment Date will be accumulated and paid on the Delayed Payment Date.

12.2 Other Changes in Time of Payment. Neither the Participant nor the Company shall take any action to accelerate or delay the payment of any benefits under this Agreement in any manner which would not be in compliance with the Section 409A Regulations.

12.3 Amendments to Comply with Section 409A; Indemnification. Notwithstanding any other provision of this Agreement to the contrary, the Company is authorized to amend this Agreement, to void or amend any election made by the Participant under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with the Section 409A Regulations without prior notice to or consent of the Participant. The Participant hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Participant in connection with the Award, including as a result of the application of Section 409A.

12.4 Advice of Independent Tax Advisor. The Company has not obtained a tax ruling or other confirmation from the Internal Revenue Service with regard to the application of Section 409A to the Award, and the Company does not represent or warrant that this Agreement will avoid adverse tax consequences to the Participant, including as a result of the application of Section 409A to the Award. The Participant hereby acknowledges that he or she has been advised to seek the advice of his or her own independent tax advisor prior to entering into this Agreement and is not relying upon any representations of the Company or any of its agents as to the effect of or the advisability of entering into this Agreement.

13. MISCELLANEOUS PROVISIONS.

13.1 Termination or Amendment. The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that except as provided in Section 8 in connection with a Change in Control, no such termination or amendment may have a materially adverse effect on the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with

applicable law or government regulation, including, but not limited to, Section 409A. No amendment or addition to this Agreement shall be effective unless in writing.

13.2 Nontransferability of the Award. Prior to the issuance of shares of Stock on the applicable Settlement Date, neither this Award nor any Units subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

13.3 Further Instruments. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

13.4 Binding Effect. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

13.5 Delivery of Documents and Notices. Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery and Signature.** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, if permitted by the Company, the Participant may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company. Any and all such documents and notices may be electronically signed.

(b) **Consent to Electronic Delivery and Signature.** The Participant acknowledges that the Participant has read Section 13.5(a) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Grant Notice, as described in Section 13.5(a). The Participant agrees that any and all such documents requiring a signature may be electronically signed and that such electronic signature shall have the same effect as handwritten signature for the purposes of validity, enforceability and admissibility. The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 13.5(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 13.5(a).

13.6 Integrated Agreement. The Grant Notice, this Agreement and the Plan, together with the Superseding Agreement, if any, shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein or therein, the provisions of the Grant Notice, this Agreement and the Plan shall survive any settlement of the Award and shall remain in full force and effect.

13.7 **Applicable Law.** This Agreement shall be governed by the laws of the [State of California] as such laws are applied to agreements between [State of California] residents entered into and to be performed entirely within the [State of California].

13.8 **Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

GENMARK DIAGNOSTICS, INC.

AMENDMENT OF RESTRICTED STOCK UNIT AND/OR
STOCK OPTION AGREEMENT(S)

THIS AMENDMENT OF RESTRICTED STOCK UNIT AND/OR STOCK OPTION AGREEMENT(S) (this "**Amendment**") is made by and between GenMark Diagnostics, Inc., a Delaware corporation (the "**Company**"), and _____ (the "**Participant**").

RECITALS

WHEREAS, the Company has previously granted the Participant certain equity awards as set forth on Attachment A hereto and may (but need not) grant additional equity awards to the Participant following the Effective Date identified in Section 1 below (collectively, the "**Awards**"), which may consist of Restricted Stock Units and/or Options in each case granted pursuant to the Company's 2020 Equity Incentive Plan (as amended, the "**Plan**"); and

WHEREAS, the Company and the Participant wish to amend the applicable agreements governing such Awards (collectively, the "**Award Agreements**") to provide for acceleration of vesting of such Awards pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Company and the Participant agree as follows:

1. Effective Date. This Amendment is effective as of _____, 2020 (the "**Effective Date**").
2. Definitions. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the applicable Award Agreement and the Plan.
3. Acceleration of Vesting of Awards upon Certain Events. Notwithstanding anything in any employment offer letter or Award Agreement(s) to the contrary, if any Award is not assumed, substituted for, or otherwise continued by the Acquiror, then the Awards shall become one hundred percent (100%) vested and non-forfeitable (and exercisable to the extent applicable) immediately prior to, but contingent upon, the consummation of a Change in Control. If an Award is assumed, substituted for, or otherwise continued, and if during the twelve (12) month period following a Change in Control the Participant's Service is either terminated without Cause (excluding by reason of death or Disability) by the Participating Company Group (or its successor) or the Participant terminates his or her Service due to Good Reason (as defined below), then all outstanding Awards (or the award(s) issued in substitution for such Awards) held by the Participant shall be one hundred percent (100%) vested and non-forfeitable (and exercisable to the extent applicable) effective immediately prior to such termination of Service. To the extent any such Award vests on the basis of performance objectives other than total stockholder return, such performance shall be deemed to have been satisfied at 100% of target performance. For this purpose, "Good Reason" shall have the meaning ascribed to such term in the Company's Executive Severance Plan unless such term (or a substantially equivalent term) is otherwise defined in a written agreement between the Participant and a Participating Company, in which case "Good Reason" shall have the meaning set forth therein.
4. Continuation of Other Terms. Except as set forth herein, all other terms and conditions of the Award Agreement(s) shall remain in full force and effect.
5. Tax Consequences. The Participant acknowledges that the Company makes no representation or warranty regarding the tax consequences of this Amendment. The Participant has been apprised that if the vesting of such Options were to be accelerated, the Options' tax status may, to the extent any such Option was designated as an Incentive Stock Option, be converted in whole or in part into a Nonstatutory Stock Option. In addition, the effect of accelerating the vesting of the Restricted Stock Awards and/or Restricted Stock Units may also result in the acceleration of the year in which such shares would otherwise be taxable to the Participant. **The Participant should consult with the Participant's own tax, legal and financial advisors regarding the consequences of this Amendment.**
6. Applicable Law. This Amendment shall be governed by the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely within the State of California.

GENMARK DIAGNOSTICS, INC.

Date: _____, 2020

By: _____

Scott Mendel

President & Chief Executive Officer

PARTICIPANT:

Date: _____, 2020

By: _____

[INSERT NAME]

Attachment A

Restricted Stock Units and Unvested Stock Options