
**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 Exchange Act of 1934

Date of Report (Date of earliest event reported): **November 8, 2018**

DigiPath, Inc.

(Exact name of registrant as specified in charter)

Nevada

(State or other Jurisdiction of Incorporation or Organization)

000-54239
(Commission
File Number)

27-3601979
(IRS Employer
Identification No.)

6450 Cameron Street, Suite 113
Las Vegas, NV 89118
(Address of Principal Executive
Offices and zip code)

(702) 527-2060

(Registrant's telephone
number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12(b))
- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

Item 1.01. Entry into a Material Definitive Agreement.

On November 8, 2018, Digipath, Inc. (the “Company”) completed the sale of 8% Senior Secured Convertible Notes in the aggregate principal amount of \$500,000 (“Notes”) to two institutional investors (the “Investors”). The transaction was effected pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended and Rule 506(b) promulgated thereunder.

The Notes mature on December 31, 2020, bear interest at a rate of 8% per annum, and are convertible into shares of the Company’s common stock at a conversion price of \$0.14 per share. The Company’s obligation under the Notes are secured by a lien on the assets of the Company and its wholly-owned subsidiary Digipath Labs, Inc., pursuant to a Security Agreement between the Company, Digipath Labs, Inc. and the collateral agent for the Investors.

The information set forth above is qualified in its entirety by reference to the actual terms of the Notes and Security Agreement, which have been filed as Exhibits 4.1 and 10.1, respectively, and which are incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 4.1 [Form of 8% Senior Secured Convertible Notes due December 31, 2020](#)

Exhibit 10.1 [Security Agreement, between Digipath, Inc. Digipath Labs, Inc., and collateral agent for the holders of the 8% Senior Secured Convertible Notes due December 31, 2020](#)

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.

DigiPath, Inc.

Date: November 21, 2018

By: /s/ Todd Peterson
Todd Peterson
Chief Financial Officer

THIS NOTE AND THE UNDERLYING SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE TRANSFERRED UNTIL (i) A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ ACT ”) SHALL HAVE BECOME EFFECTIVE WITH RESPECT THERETO OR (ii) RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT REGISTRATION UNDER THE ACT IS NOT REQUIRED IN CONNECTION WITH SUCH PROPOSED TRANSFER NOR IS IN VIOLATION OF ANY APPLICABLE STATE SECURITIES LAWS. THIS LEGEND SHALL BE ENDORSED UPON ANY NOTE ISSUED IN EXCHANGE FOR THIS NOTE.

DIGIPATH, INC.

8% Secured Convertible Promissory Note

\$ _____, 2018 (the “ Issue Date ”)

FOR VALUE RECEIVED, **DIGIPATH, INC.**, a Nevada corporation (the “ **Company** ”) with its principal executive office at 6450 Cameron Blvd., Suite 113, Las Vegas, Nevada 89118, promises to pay to the order _____ or its registered assigns (the “ **Holder** ” or “ **Payee** ”), the principal amount of \$ _____ (the “ **Principal Amount** ”), on December 31, 2020 (the “ **Maturity Date** ”) or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding Principal Amount of this Secured Convertible Promissory Note (this “ **Note** ”) in accordance with the provisions hereof.

Interest shall accrue on the Principal Amount outstanding from time to time commencing on the date hereof and shall be payable (i) quarterly in arrears commencing on January 1, 2019 and on the first day of each calendar quarter thereafter, (ii) upon maturity (whether at the Maturity Date, by acceleration or otherwise) and (iii) at any time after maturity until paid in full (after as well as before judgment), on demand. All computations of interest hereunder shall be made based on the actual number of days elapsed in a year of 365 days (including the first day but excluding the last day during which any such Principal Amount is outstanding). All payments by the Company hereunder shall be applied first to pay any interest which is due, but unpaid, and then to reduce the Principal Amount.

Each payment by the Company pursuant to this Note shall be made without set-off or counterclaim and in immediately available funds. The Company (i) waives presentment, demand, protest or notice of any kind in connection with this Note and (ii) agrees to pay to the Holder of this Note, on demand, all costs and expenses (including reasonable and documented legal fees and expenses) incurred in connection with the enforcement and collection of this Note.

This Note is one of a series of Secured Convertible Promissory Notes of like tenor in the aggregate principal amount of \$500,000 (together, the “**Notes**”) and has been issued pursuant to a Securities Purchase Agreement (the “**Securities Purchase Agreement**”) entered into between the Company and the Payee, and is secured by a Security Agreement (the “**Security Agreement**”) among the Company and CSW Ventures, LP, as agent (“**Agent**”) for the holders of the Notes (the “ **Holders**”), covering certain collateral (the “**Collateral**”), all as more particularly described and provided therein, and is entitled to the benefits thereof. The Security Agreement and any and all other documents executed and delivered by the Company to Agent under which the Agent or the Holders are granted liens on assets of the Company in connection with the transactions contemplated by the Securities Purchase Agreement are collectively referred to as the “**Security Documents**.”

Unless otherwise defined in this Note, capitalized terms used herein shall have the meanings set forth in the Note Purchase Agreement.

1. Principal Repayment

A. **Optional Prepayment**. At any time from and after the Issue Date, the Company may prepay this Note, without premium or penalty, in whole or in part, with accrued interest to the date of such prepayment on the amount prepaid.

B. **Notice of Prepayment**. Before the Company shall be permitted to prepay this Note pursuant to 1A hereof, the Company shall provide ten (10) days prior notice to the Payee of its intent to make such prepayment, which notice shall state the date and amount of such prepayment (the “**Prepayment Date**”). The Payee shall have the option at any time prior to the Prepayment Date to elect to convert this Note pursuant to Section 5 below.

2. Computation of Interest

A. **Base Interest Rate**. Subject to Sections 2B and 2C below, the outstanding Principal Amount shall bear interest at the rate of eight (8%) percent per annum.

B. **Penalty Interest**. Upon the occurrence and during the continuance of an Event of Default (as defined below), the rate of interest applicable to the unpaid Principal Amount shall be increased to ten (10%) percent per annum.

C. **Maximum Rate**. In the event that it is determined that, under the laws relating to usury applicable to the Company or the indebtedness evidenced by this Note (“**Applicable Usury Laws**”), the interest charges and fees payable by the Company in connection herewith or in connection with any other document or instrument executed and delivered in connection herewith cause the effective interest rate applicable to the indebtedness evidenced by this Note to exceed the maximum rate allowed by law (the “**Maximum Rate**”), then such interest shall be recalculated for the period in question and any excess over the Maximum Rate paid with respect to such period shall be credited, without further agreement or notice, to the Principal Amount outstanding hereunder to reduce said balance by such amount with the same force and effect as though the Company had specifically designated such extra sums to be so applied to principal and the Payee had agreed to accept such extra payment(s) as a premium-free prepayment. All such deemed prepayments shall be applied to the principal balance payable at maturity. In no event shall any agreed-to or actual exaction as consideration for this Note exceed the limits imposed or provided by Applicable Usury Laws in the jurisdiction in which the Company is resident applicable to the use or detention of money or to forbearance in seeking its collection in the jurisdiction in which the Company is resident.

3. Covenants of Company.

A. Affirmative Covenants. The Company covenants and agrees that, so long as this Note shall be outstanding, unless it has otherwise obtained the prior written consent of Holders of not less than 50% of the outstanding Principal Amount of the Notes (the “ **Required Holders** ”), it will perform the obligations set forth in this Section 2A:

(i) Taxes and Levies. The Company (and each of its subsidiaries) will promptly pay and discharge all taxes, assessments, and governmental charges or levies imposed upon the Company or upon its income and profits, or upon any of its property, before the same shall become delinquent, as well as all claims for labor, materials and supplies which, if unpaid, might become a lien or charge upon such properties or any part thereof; provided, however, that the Company shall not be required to pay and discharge any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and the Company shall set aside on its books adequate reserves in accordance with generally accepted accounting principles with respect to any such tax, assessment, charge, levy or claim so contested;

(ii) Maintenance of Existence. The Company (and each of its subsidiaries) will do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and comply with all laws applicable to the Company, except where the failure to comply would not have a material adverse effect on the Company;

(iii) Maintenance of Property. The Company (and each of its subsidiaries) will at all times reasonably maintain, preserve, protect and keep its property used or useful in the conduct of its business in good repair, working order and condition (ordinary wear and tear excepted), and from time to time make all needful and proper repairs, renewals, replacements and improvements thereto as shall be reasonably required in the conduct of its business;

(iv) Insurance. The Company (and each of its subsidiaries) will, to the extent necessary for the operation of its business, keep adequately insured by financially sound reputable insurers, all property of a character usually insured by similar corporations and carry such other insurance as is usually carried by similar corporations;

(v) Books and Records. The Company (and each of its subsidiaries) will at all times keep true and correct books, records and accounts reflecting all of its business affairs and transactions in accordance with GAAP. Such books and records shall be open at reasonable times and upon reasonable notice to the inspection of the Payee or its agents;

(vi) Notice of Certain Events. The Company (and each of its subsidiaries) will give prompt written notice (with a description in reasonable detail) to the Payee of the occurrence of any Event of Default or any event which, with the giving of notice or the lapse of time, would constitute an Event of Default; and

B. Negative Covenants. The Company covenants and agrees that, so long as this Note shall be outstanding, unless it has otherwise obtained the prior written consent of the Required Holders, it will perform the obligations set forth in this Section 3B:

(i) Liquidation, Dissolution. The Company will not (and will not permit any of its subsidiaries to) liquidate or dissolve, consolidate with, or merge into or with, any other corporation or other entity, except that any wholly-owned subsidiary may merge with another wholly-owned subsidiary or with the Company (so long as the Company is the surviving corporation and no Event of Default shall occur as a result thereof); provided, however, such prior written consent shall not be required in connection with the consummation of any merger or change of control transaction which results in prepayment of the Note pursuant to the terms of this Note;

(ii) Sales of Assets. The Company will not (nor permit any of its subsidiaries with respect to their assets and properties), other than in the ordinary course of business, sell, transfer, lease or otherwise dispose of, or grant options, warrants or other rights with respect to, all or a substantial part of its properties or assets material to the Company's business to any person or entity; provided, however, such prior written consent shall not be required in connection with licenses or other rights granted by the Company to a strategic partner, licensee or distributor as approved by the Board of Directors of the Company (the "**Board of Directors**");

(iii) Redemptions. The Company will not redeem or repurchase any outstanding equity and/or debt securities of the Company (or its subsidiaries);

(iv) Indebtedness. Company will hereafter not create, incur, assume or suffer to exist, contingently or otherwise, any indebtedness which is not expressly subordinate in all respects to the Notes, *provided*, that this covenant shall not apply to (A) capitalized leases, purchase money indebtedness (secured solely by Liens on the equipment or assets leased or purchased), (B) accounts payable, or (C) other accrued expenses incurred by the Company in the ordinary course of business;

(v) Negative Pledge. Other than with respect to the Notes, the Company will not (nor will it permit its subsidiaries to) hereafter create, incur, assume or suffer to exist any mortgage, pledge, hypothecation, assignment, security interest, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any financing lease) (each, a "**Lien**") upon any of its property, revenues or assets, whether now owned or hereafter acquired, except any of the following (collectively, "**Permitted Liens**");

(a) Liens granted to secure indebtedness incurred (i) to finance the acquisition (whether by purchase or capitalized lease) of tangible assets or (ii) under equipment leases or purchase money indebtedness, but in each case, only on the assets acquired with the proceeds of such indebtedness;

(b) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(c) Liens of carriers, warehousemen, mechanics, materialmen and landlords incurred in the ordinary course of business for sums not overdue or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds; and

(e) Judgment Liens in existence less than 30 days after notice of the entry thereof is forwarded to the Company or with respect to which execution has been stayed.

(vi) Transactions with Affiliates. The Company will not (and will not permit any of its subsidiaries to) enter into any transaction after the Issue Date, including, without limitation, the purchase, sale, lease or exchange of property, real or personal, the purchase or sale of any security, the borrowing or lending of any money, or the rendering of any service, with any person or entity affiliated with the Company or any of its subsidiaries (including officers, directors and shareholders owning five (5%) percent or more of the Company's outstanding capital stock), except in the ordinary course of and pursuant to the reasonable requirements of its business and upon fair and reasonable terms not less favorable than would be obtained in a comparable arms-length transaction with any other person or entity not affiliated with the Company as determined by the Board of Directors in good faith.

(vii) Dividends. The Company will not declare or pay any cash dividends or distributions on its outstanding capital stock.

(viii) Proration of Payments. The Company shall not make or permit any payment on account of principal or interest payable hereunder or any of the other Notes in excess of each Holder's pro rate share of payments then due under the Notes.

4. Events of Default .

If any of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation by law or otherwise) (each, an “ **Event of Default** ”):

(i) Non-Payment of Obligations . The Company shall default in the payment of the principal of this Note as and when the same shall become due and payable (whether by acceleration or otherwise) or shall fail to pay accrued interest on this Note within five (5) business days of when the same shall become due and payable (whether by acceleration or otherwise);

(ii) Non-Performance of Affirmative Covenants . The Company shall default in the due observance or performance of any covenant set forth in Section 3A, which default shall continue uncured for thirty (30) days;

(iii) Non-Performance of Negative Covenants . The Company shall default in the due observance or performance of any covenant set forth in Section 3B, and, if capable of cure, such default shall not have been cured within thirty (30) days;

(iv) Bankruptcy, Insolvency, Etc . The Company (or any of its subsidiaries) shall:

(a) in any legal document admit in writing its inability to pay its debts as they become due;

(b) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for the Company or any of its property, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiesce in, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for the Company or for any part of its property;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of the Company, and, if such case or proceeding is not commenced by the Company or converted to a voluntary case, such case or proceeding shall be consented to or acquiesced in by the Company or shall result in the entry of an order for relief; or

(e) take any corporate or other action authorizing, or in furtherance of, any of the foregoing;

(v) Cross-Default. The Company shall default in the payment when due, after the expiration of any applicable grace period, of any amount payable under any other obligation of the Company for money borrowed in excess of \$100,000;

(vi) Cross-Acceleration. Any other indebtedness for borrowed money of the Company (or any of its subsidiaries) in an aggregate principal amount exceeding \$100,000 shall be duly declared to be or shall become due and payable prior to the stated maturity thereof or shall not be paid as and when the same becomes due and payable including any applicable grace period;

(vii) Other Breaches, Defaults. The Company shall default or be in breach of any term or provision of this Note, any other Transaction Document (as defined in the Note Purchase Agreement), in any material respect, for a period of thirty (30) days, or any material representation or warranty made by the Company to the Payee in any Transaction Document shall be materially false or misleading; or

(viii) Security Documents. The Security Documents shall cease to create a valid and perfected Lien in and to any material Collateral;

then, and in any such event, the Required Holders shall, by notice to the Company, take or cause to be taken any or all of the following actions, without prejudice to the rights of Payee to enforce its claims against the Company: (1) declare the principal of and any accrued interest and all other amounts payable under this Note to be due and payable, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company, (2) proceed to enforce or cause to be enforced any remedies provided under the Security Agreement, and (3) exercise any other remedies available at law or in equity, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in this Note; provided, that upon the occurrence of any Event of Default referred to in Section 4(v) then (without prejudice to the rights and remedies specified in clause (3) above) automatically, without notice, demand or any other act by any Holder, the principal of and any accrued interest and all other amounts payable under this Note shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, anything contained in this Note to the contrary notwithstanding. No remedy conferred in this Note upon any Holder is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereinafter existing at law or in equity or by statute or otherwise.

5. Conversion of Note.

A. Optional Conversion. The Holder of this Note shall have the option, at any time and from time to time, prior to the date on which the Company makes payment in full of the Principal Amount of this Note in accordance herewith, all accrued interest thereon and all other amounts due and payable thereunder to convert all or any portion of the outstanding Principal Amount of this Note plus all accrued and unpaid interest thereon (such Principal Amount and accrued and unpaid interest to be so converted the “**Conversion Amount**”) into shares of common stock, par value \$0.001 per share (“**Common Stock**”), of the Company at an initial conversion price per share equal to \$0.14 per share (the “**Conversion Price**”), subject to adjustment as provided in subsection 5E below. The shares of Common Stock issuable upon conversion of this Note at the Conversion Price are referred to herein as the “**Conversion Shares**.”

B. Conversion Limitation. Notwithstanding anything contained herein to the contrary, the Holder shall not be entitled to convert pursuant to the terms of this Note an amount that would be convertible into that number of Conversion Shares which would exceed the difference between the number of shares of Common Stock beneficially owned by such Holder and 4.99% of the outstanding shares of Common Stock of the Company. For the purposes of the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and Regulation 13d-3 thereunder. The Holder may void the Conversion Share limitation described in this Section 5B upon 65 days prior notice to the Company or without any notice requirement upon an Event of Default.

C. Mechanics of Conversion.

(i) Before the Holder of this Note shall be entitled to convert this Note into shares of Common Stock pursuant to Section 5A, such holder shall give written notice to the Company in the form attached hereto as Annex A (“**Conversion Notice**”), at its principal corporate office, by email, facsimile or otherwise, of the election to convert the same and shall state therein the Conversion Amount and the name or names in which the certificate or certificates for shares of Common Stock are to be issued. On or before the third (3rd) business day following the date of receipt of a Conversion Notice, the Company shall (A) if legends are not required to be placed on certificates of Common Stock pursuant to the then existing provisions of Rule 144 of the Securities Act of 1933 (“**Rule 144**”) and provided that the Company’s transfer agent is participating in the Depository Trust Company’s (“**DTC**”) Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder’s or its designee’s balance account with DTC, or (B) if the Company’s transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled which certificates shall not bear any restrictive legends unless required pursuant the Rule 144.

(ii) All Common Stock which may be issued upon conversion of the Note will, upon issuance, be duly issued, fully paid and non-assessable and free from all taxes, liens, and charges with respect to the issuance thereof.

D. Authorized Shares. At all times the Company shall have authorized and shall have reserved a sufficient number of shares of Common Stock to provide for the conversion of the Notes at the then effective Conversion Price. Without limiting the generality of the foregoing, if, at any time, the Conversion Price is decreased, the number of shares of Common Stock authorized and reserved for issuance upon the conversion of this Note shall be proportionately increased.

E. Anti-Dilution Provisions. The Conversion Price in effect at any time and the number and kind of securities issuable upon the conversion of this Note shall be subject to adjustment from time to time upon the happening of certain events as follows:

(i) In case the Company shall hereafter (i) declare a dividend or make a distribution on its outstanding shares of Common Stock in shares of Common Stock, (ii) subdivide or reclassify its outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect at the time of the record date for such dividend or distribution or of the effective date of such subdivision, combination or reclassification shall be adjusted so that it shall equal the price determined by multiplying the Conversion Price by a fraction, the denominator of which shall be the number of shares of Common Stock outstanding after giving effect to such action, and the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such action. Such adjustment shall be made successively whenever any event listed above shall occur.

(ii) Whenever the Conversion Price is adjusted pursuant to Subsection (i) above, the number of Conversion Shares issuable upon conversion of this Note shall simultaneously be adjusted by multiplying the number of Conversion Shares initially issuable upon conversion of this Note by the Conversion Price in effect on the date hereof and dividing the product so obtained by the Conversion Price, as adjusted.

(iii) In case of any reorganization, reclassification or change of the Common Stock (including any such reorganization, reclassification or change in connection with a consolidation or merger in which the Company is the continuing entity), or any consolidation of the Company with, or merger of the Company with or into, any other entity (other than a consolidation or merger in which the Company is the continuing entity), or of any sale of the properties and assets of the Company as, or substantially as, an entirety to any other person or entity, this Note shall thereafter be convertible into the kind and amount of stock or other securities or property receivable upon such reorganization, reclassification, change, consolidation, merger or sale by a Holder of the number of shares of Common Stock into which this Note would have been converted prior to such transaction. The provisions of this subsection (iii) shall similarly apply to successive reorganizations, reclassifications, changes, consolidations, mergers or sales immediately prior to such reorganization, reclassification, change, consolidation, merger or sale.

6. Amendments and Waivers .

The provisions of this Note may from time to time be amended, modified or supplemented, if such amendment, modification or supplement is in writing and consented to by the Company and the Required Holders; provided, however, that no such amendment, modification or waiver:

(i) which would modify this Section 6A, change the definition of “Required Holders”, extend the Maturity Date for more than 120 days, or subject the Holder under each Note to any additional obligations shall be made without the consent of the Holder of each Note, or

(ii) which would reduce the amount of any payment of principal of or interest on any Principal Amount payable hereunder (or reduce the Principal Amount of or rate of interest payable hereunder) shall be made without the consent of the Holder of each Note so affected.

A. No failure or delay on the part of the Payee in exercising any power or right under this Note shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Company in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Payee shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

B. To the extent that the Company makes a payment or payments to the Payee, and such payment or payments or any part thereof are subsequently for any reason invalidated, set aside and/or required to be repaid by the Payee to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made by the Payee or such enforcement or setoff had not occurred.

7. Miscellaneous .

A. Parties in Interest . All covenants, agreements and undertakings in this Note binding upon the Company or the Payee shall bind and inure to the benefit of its successors and permitted assigns of the Company and the Payee, respectively, whether so express or not.

B. Governing Law . This Note shall be governed by and construed in accordance with the laws of the State of Nevada without regard to the conflicts of laws principles thereof.

C. Waiver of Jury Trial . THE PAYEE AND THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE OR ANY OTHER DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PAYEE OR THE COMPANY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PAYEE’S PURCHASING THIS NOTE.

IN WITNESS WHEREOF, this Note has been executed and delivered on the date specified above by the duly authorized representative of the Company.

DIGIPATH, INC.

By: _____
Name: _____
Title: _____

ANNEX A

CONVERSION NOTICE

The undersigned hereby elects to convert principal and/or interest under the 8% Senior Secured Convertible Promissory Note, originally issued as of _____, 2018 (the "Note") of Digipath, Inc., a Nevada corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof and the Note, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 5B of the Note, as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended.

Conversion calculations:

Date to Effect Conversion: _____

Principal Amount of Note to be Converted: _____

Amount of Interest of Note to be Converted: _____

Number of shares of Common Stock to be issued:

Signature: _____

Name: _____

Address for Delivery of Common Stock Certificates: _____

Or

DWAC Instructions:

Broker No: _____

Account No: _____

SECURITY AGREEMENT

SECURITY AGREEMENT (this “Agreement”), dated as of October 23, 2018 (this “Agreement”) between DIGIPATH, INC., a Nevada corporation (the “Parent”), DIGIPATH, LABS, INC., a Nevada corporation (“Digi Labs” and together with the Parent, collectively, the “Company”), and CSW Ventures, LP, (in such capacity, the “Collateral Agent”) for the holder(s) of the Note (as defined below) listed on Schedule A hereto, as it may be updated from time to time (collectively, the “Holders”).

WHEREAS, the Holders have agreed to purchase up to \$ **500,000** in the aggregate principal amount of 8% Senior Secured Convertible Promissory Notes of the Parent dated as of the date hereof (the “Notes”);

WHEREAS, Digi Labs is a wholly-owned subsidiary of the Parent; and

WHEREAS, in order to induce the Holders to purchase the Notes, the Company has agreed to grant the Collateral Agent, for the benefit of the Holders, a security interest in the Company’s assets to secure the Parent’s obligations under the Notes.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. The term “State”, as used herein, means the State of Nevada. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9. The term “Obligations”, as used herein, means all of the indebtedness, obligations and liabilities of the Company to the Holders, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the Notes, or other instruments or agreements executed and delivered pursuant thereto or in connection therewith or this Agreement. The term “Event of Default,” as used in this Agreement, shall mean an Event of Default under any of the Notes, the failure of the company to pay any of the Obligations when due, or such other default or breach by the Company of any of the Obligations.

2. Grant of Security Interest. The Company hereby grants to the Collateral Agent, for the benefit of the Holders, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to the Collateral Agent, for the benefit of the Holders, the following properties, assets and rights of the Company, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the “Collateral”): all personal and fixture property of every kind and nature including without limitation all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles).

3. Authorization to File Financing Statements. The Company hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Company or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Company is an organization, the type of organization and any organization identification number issued to the Company. The Company agrees to furnish any such information to the Collateral Agent promptly upon request.

4. Other Actions. Further to insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, its security interest in the Collateral, the Company agrees, in each case at the Company's own expense, to take the following actions with respect to the following Collateral:

4.1. Commercial Tort Claims. If the Company shall at any time hold or acquire a commercial tort claim, the Company shall immediately notify the Collateral Agent in a writing signed by the Company of the brief details thereof and grant to the Collateral Agent, for the benefit of the Holders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Collateral Agent.

4.2. Other Actions as to any and all Collateral. The Company further agrees to take any other action reasonably requested by the Collateral Agent to insure the attachment, and perfection of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in any and all of the Collateral.

5. Representations and Warranties Concerning Company's Legal Status. The Company represents and warrants to the Collateral Agent as follows: (a) the Company's exact legal name is that indicated on the signature page hereof, (b) the Company is a corporation incorporated in the jurisdiction of the State of Nevada, and (c) the Company's chief executive office and mailing address is located at 6450 Cameron Blvd., Suite 113, Las Vegas, Nevada 89118.

6. Covenants Concerning Company's Legal Status. The Company covenants with the Collateral Agent and Holders as follows: (a) without providing at least 30 days prior written notice to the Collateral Agent, the Company will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, and (b) the Company will not change its type of organization, jurisdiction of organization or other legal structure.

7. Representations and Warranties Concerning Collateral, Etc. The Company further represents and warrants to the Collateral Agent that the Company is the owner of the Collateral, free from any adverse lien, security interest or other encumbrance, except for liens incurred in the ordinary course of business which arise by operation of law and which liens secure amounts not yet due.

8. Insurance. The Company will maintain with financially sound and reputable insurers insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that the Company will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as may be reasonably satisfactory to the Collateral Agent.

9. Collateral Protection Expenses; Preservation of Collateral.

9.1. Expenses incurred by Collateral Agent. In its discretion, the Collateral Agent may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, make repairs thereto and pay any necessary filing fees or, if the Company fails to do so, insurance premiums. The Company agrees to reimburse the Collateral Agent on demand for any and all expenditures so made. The Collateral Agent shall have no obligation to the Company to make any such expenditures, nor shall the making thereof relieve the Company of any default.

9.2. Collateral Agent's Obligations and Duties. Anything herein to the contrary notwithstanding, the Company shall remain liable under each contract or agreement comprised in the Collateral to be observed or performed by the Company thereunder. The Collateral Agent shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Collateral Agent of any payment relating to any of the Collateral, nor shall the Collateral Agent be obligated in any manner to perform any of the obligations of the Company under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Collateral Agent in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Collateral Agent or to which the Collateral Agent may be entitled at any time or times. The Collateral Agent's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Collateral Agent deals with similar property for its own account.

10. Remedies. If an Event of Default shall have occurred and be continuing, the Collateral Agent may, without notice to or demand upon the Company, declare this Agreement to be in default, and the Collateral Agent shall thereafter have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State or of any jurisdiction in which Collateral is located.

11. Standards for Exercising Remedies. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Company acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (a) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Company, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. The Company acknowledges that the purpose of this Section 11 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would not be commercially unreasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11. Without limitation upon the foregoing, nothing contained in this Section 11 shall be construed to grant any rights to the Company or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 11.

12. No Waiver. The Collateral Agent shall not be deemed to have waived any of its rights upon or under the Obligations or the Collateral unless such waiver shall be in writing and signed by the Collateral Agent. No delay or omission on the part of the Collateral Agent in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Collateral Agent deems expedient.

13. Waivers by Company. The Company waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Company assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Collateral Agent may deem advisable. The Collateral Agent shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 9.2. The Company further waives any and all other suretyship defenses.

14. Marshalling. The Collateral Agent shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Company hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Company hereby irrevocably waives the benefits of all such laws.

15. Proceeds of Dispositions; Expenses . The Company shall pay to the Collateral Agent on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Collateral Agent in protecting, preserving or enforcing the Collateral Agent's rights under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Collateral Agent may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Company, and the Company shall remain liable for any deficiency in the payment of the Obligations.

16. Overdue Amounts . Until paid, all amounts due and payable by the Company hereunder shall be a debt secured by the Collateral.

17. Governing Law; Consent to Jurisdiction . THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA. The Company agrees that any suit for the enforcement of this Agreement may be brought in the courts of the State or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Company by mail at the address specified in Section 5. The Company hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

18. Miscellaneous . The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Company and its respective successors and assigns, and shall inure to the benefit of the Holders, the Collateral Agent and their successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein.

IN WITNESS WHEREOF , intending to be legally bound, the Company has caused this Agreement to be duly executed as of the date first above written.

DIGIPATH, INC.

By: _____
Name: _____
Title: _____

DIGIPATH LABS, INC.

By: _____
Name: _____
Title: _____

CSW Ventures, LP, as Collateral Agent for the Holders

By: _____
Name: _____
Title: _____

Schedule A
Holders

Name

Principal Amount
