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

**AMENDMENT NO. 6
TO
FORM S-1**
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ACCURAY INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

3841
(Primary Standard Industrial
Classification Code Number)

20-8370041
(I.R.S. Employer
Identification Number)

1310 Chesapeake Terrace, Sunnyvale, California 94089
(408) 716-4600
(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

Euan S. Thomson, Ph.D.
Chief Executive Officer
Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
(408) 716-4600
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies To:

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Palo Alto, California 94304
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Approximate date of commencement of the proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

The purpose of this Amendment No. 6 to the Registration Statement on Form S-1 (File No. 333-138622) is to file Exhibit 2.1 and to re-file Exhibits 5.1, 5.2, 10.20, 10.49, and 23.2, and to update disclosures in Part II to this Registration Statement. Accordingly, a preliminary prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable in connection with the sale and distribution of the securities being registered. All amounts are estimated except the Securities and Exchange Commission registration fee and the NASD filing fee. All the expenses below will be paid by the Registrant.

Item	Amount
Securities and Exchange Commission Registration fee	\$ 29,533
NASD filing fee	23,500
NASDAQ Global Market listing fee	150,000
Legal fees and expenses	1,160,000
Accounting fees and expenses	1,150,000
Printing and engraving expenses	240,000
Transfer Agent and Registrar fees	15,000
Blue Sky fees and expenses	10,000
Miscellaneous Fees and Expenses	21,967
Total	\$ 2,800,000

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act of 1933, as amended. Our certificate of incorporation to be in effect upon the completion of this offering provides for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our bylaws to be in effect upon the completion of this offering provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law. In addition, we have entered into indemnification agreements with our directors, officers and some employees containing provisions which are in some respects broader than the specific indemnification provisions contained in the Delaware General Corporation Law. The indemnification agreements may require us, among other things, to indemnify our directors against certain liabilities that may arise by reason of their status or service as directors and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified. Reference is also made to Section 9(c) of the underwriting agreement to be filed as Exhibit 1.1 hereto, which provides for indemnification by the underwriter of our officers and directors against certain liabilities. Reference is also made to the offer letter with Eric P. Lindquist filed as Exhibit 10.12 hereto, which provides for indemnification by the Registrant of

Mr. Lindquist in the event a suit is filed against him in connection with his non-competition agreement with a former employer.

Item 15. Recent Sales of Unregistered Securities

From January 1, 2004 through the date of this registration statement, the Registrant has made sales of the following unregistered securities:

1. The Registrant sold an aggregate of 2,871,813 shares of common stock to employees, directors and consultants for consideration in the form of cash and forfeited shares in the aggregate amount of \$2,020,116.85 upon the exercise of stock options and stock awards, 83,433 shares of which have been repurchased.

2. The Registrant granted stock options and stock awards to employees, directors and consultants under its 1998 Equity Incentive Plan covering an aggregate of 8,069,663 shares of common stock, with exercise prices ranging from \$0.85 to \$13.05 per share. Of these, options covering an aggregate of 1,725,776 were cancelled without being exercised.

3. The Registrant claimed exemption from registration under the Securities Act for the sales and issuances of securities in the transactions described in paragraphs (1) and (2) above under Section 4(2) of the Securities Act in that such sales and issuances did not involve a public offering or under Rule 701 promulgated under the Securities Act, in that they were offered and sold either pursuant to written compensatory plans or pursuant to a written contract relating to compensation, as provided by Rule 701.

4. In January and May 2003, the Registrant issued 100,000 shares of its common stock to Randall Young, an investor, upon exercise of a warrant to purchase shares of its common stock for an aggregate exercise price of \$50,000. In March 2004, the Registrant issued 2,280,000 shares of its common stock to Pacific Republic Capital upon exercise of a warrant to purchase shares of its common stock for an aggregate exercise price of \$3,192,000. In March 2005, the Registrant issued 1,000,000 shares of its common stock to Pacific Republic Capital upon exercise of a warrant to purchase shares of its common stock for an aggregate exercise price of \$1,400,000. In November 2005, the Registrant issued 16,666 shares of its common stock to the Thomas Fogarty Separate Property Trust upon exercise of a warrant to purchase shares of its common stock for an aggregate exercise price of \$167,000.

5. The Registrant claimed exemption from registration under the Securities Act for the sale and issuance of securities in the transactions described in paragraph (4) by virtue of Section 4(2) and/or Regulation D promulgated thereunder as transactions not involving any public offering. All of the purchasers of unregistered securities for which the Registrant relied on Section 4(2) and/or Regulation D represented that they were accredited investors as defined under the Securities Act. The Registrant claimed such exemption on the basis that (a) the purchasers in each case represented that they intended to acquire the securities for investment only and not with a view to the distribution thereof and that they either received adequate information about the registrant or had access, through employment or other relationships, to such information and (b) appropriate legends were affixed to the stock certificates issued in such transactions.

Item 16. Exhibits and Financial Statements

(a) Exhibits

Exhibit No.	Description of Exhibit
1.1**	Form of Underwriting Agreement.
2.1	Agreement and Plan of Merger of Accuray Incorporated, a Delaware Corporation, and Accuray Incorporated, a California Corporation, dated as of February 3, 2007.
3.1**	Amended and Restated Certificate of Incorporation of Registrant.
3.2**	Amended and Restated Certificate of Incorporation of Registrant, to be filed upon the completion of this offering.
3.3**	Amended and Restated Bylaws of Registrant.
3.4**	Amended and Restated Bylaws of Registrant, to be in effect upon the completion of this offering.
4.1**	Common Stock Warrant dated August 9, 2002 by and between Registrant and Hazem Chehabi, M.D.
4.2**	Investors' Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.
4.3**	Form of Common Stock Certificate.
5.1	Form of Opinion of Latham & Watkins LLP.
5.2	Form of Opinion of Richards, Layton & Finger, P.A.
10.1**	Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.
10.2**	Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.
10.3**	Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.
10.4**	Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.
10.5**	Accuray Incorporated 2007 Incentive Award Plan and forms of agreements relating thereto.
10.6**	Accuray Incorporated 2007 Employee Stock Purchase Plan and forms of agreements relating thereto.
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10.9**	Employment Terms Letter dated November 10, 2006 by and between Registrant and Chris A. Raanes.

- 10.10** Employment Terms Letter dated November 10, 2006 by and between Registrant and Robert E. McNamara.
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- 10.14** Independent Contractor Agreement effective as of April 1, 2006 by and between Registrant and John R. Adler, as amended effective as of May 24, 2006.
- 10.15** Independent Contractor Agreement effective as of April 1, 2006 by and between the CyberKnife Society and John R. Adler, as amended effective as of October 3, 2006.
- 10.16** License Agreement effective as of December 12, 2004 by and between Registrant and American Science and Engineering, Inc.
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- 10.21†** Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.
- 10.22†** Consulting Agreement effective as of March 11, 2004 by and between Registrant and Forte Automation Systems, Inc.
- 10.23†** Amended and Restated International Distributor Agreement effective as of April 1, 2004 by and between Registrant and President Medical Technologies Co., Ltd. Inc.
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- 16.1** Letter from PricewaterhouseCoopers LLP.
- 21.1** List of subsidiaries.
- 23.1 Consent of Latham & Watkins LLP (included in Exhibit 5.1).
- 23.2** Consent of Grant Thornton LLP, independent registered public accounting firm.
- 23.3** Consent of Cogent Valuation.
- 23.4 Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.2).
- 24.1** Power of Attorney.

* To be filed by amendment.

** Previously filed.

† Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been filed separately with the Securities and Exchange Commission.

None.

Item 17. Undertakings

Insofar as indemnification for liabilities arising under the Securities Act may be permitted as to directors, officers and controlling persons of Accuray pursuant to the provisions described in Item 14, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by Accuray of expenses incurred or paid by a director, officer or controlling person of Accuray in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus as filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by Accuray pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

The undersigned registrant hereby undertakes to provide the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

That for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

That for the purpose of determining liability under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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AGREEMENT AND PLAN OF MERGER
OF ACCURAY INCORPORATED,
A DELAWARE CORPORATION,
AND
ACCURAY INCORPORATED,
A CALIFORNIA CORPORATION

THIS AGREEMENT AND PLAN OF MERGER dated as of February 3, 2007 (the "Agreement") is between Accuray Incorporated, a Delaware corporation ("Accuray Delaware"), and Accuray Incorporated, a California corporation ("Accuray California"). Accuray Delaware and Accuray California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. Accuray Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of Eighty-Seven Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (87,419,331) shares, of which Seventy Million (70,000,000) shares are designated "Common Stock," and Seventeen Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (17,419,331) shares of which are designated "Preferred Stock." Such shares have a par value of \$0.001 per share. Four Million Five Hundred Thousand (4,500,000) of the authorized shares of Preferred Stock are designated "Series A Preferred Stock" (the "Series A Preferred"), One Million Seventy Thousand Six Hundred Sixty-Six (1,070,666) of the authorized shares of Preferred Stock are designated "Series A-1 Preferred Stock" (the "Series A-1 Preferred"), Six Hundred Sixty-Six Thousand Six Hundred Sixty-Five (666,665) of the authorized shares of Preferred Stock are designated "Series B Preferred Stock" (the "Series B Preferred") and Eleven Million One Hundred Eighty-Two Thousand (11,182,000) of the authorized shares of Preferred Stock are designated "Series C Preferred Stock" (the "Series C Preferred"). As of the date hereof, one thousand (1,000) shares of Common Stock are issued and outstanding, all of which are held by Accuray California, and no shares of Preferred Stock are issued and outstanding.

B. Accuray California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of Eighty-Seven Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (87,419,331) shares, of which Seventy Million (70,000,000) shares are designated "Common Stock," and Seventeen Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (17,419,331) shares of which are designated "Preferred Stock." None of such shares has any par value. Four Million Five Hundred

Thousand (4,500,000) of the authorized shares of Preferred Stock are designated "Series A Preferred Stock" (the "Series A Preferred"), One Million Seventy Thousand Six Hundred Sixty-Six (1,070,666) of the authorized shares of Preferred Stock are designated "Series A-1 Preferred Stock" (the "Series A-1 Preferred"), Six Hundred Sixty-Six Thousand Six Hundred Sixty-Five (666,665) of the authorized shares of Preferred Stock are designated "Series B Preferred Stock" (the "Series B Preferred") and Eleven Million One Hundred Eighty-Two Thousand (11,182,000) of the authorized shares of Preferred Stock are designated "Series C Preferred Stock" (the "Series C Preferred"). As of the date hereof, Seventeen Million One Hundred Ninety-Four Thousand Five Hundred Thirty-Four (17,194,534) shares of Common Stock were issued and outstanding, Four Million Five Hundred Thousand (4,500,000) shares of Series A Preferred were issued and outstanding, One Million Seventy Thousand Six Hundred Sixty-Six (1,070,666) shares of Series A-1 Preferred were issued and outstanding, Six Hundred Sixty-Six Thousand Six Hundred Sixty-Five (666,665) shares of Series B Preferred were issued and outstanding and Eleven Million One Hundred Eighty-Two Thousand (11,182,000) shares of Series C Preferred were issued and outstanding.

C. The Board of Directors of Accuray California has determined that, for the purpose of effecting the reincorporation of Accuray California in the State of Delaware, it is advisable and in the best interests of Accuray California and its shareholders that Accuray California merge with and into Accuray Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of Accuray Delaware and Accuray California have approved this Agreement.

E. This Agreement was submitted to the stockholders of Accuray Delaware and Accuray California for adoption thereby.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Accuray Delaware and Accuray California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

ARTICLE I
MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California Corporations Code, Accuray California shall be merged with and into Accuray Delaware (the "Merger"), the separate existence of Accuray California shall cease and Accuray Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and Accuray Delaware shall be, and is herein sometimes referred to as the "Surviving Corporation," and the name of the Surviving Corporation shall be Accuray Incorporated.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

- (a) This Agreement and the Merger shall have been adopted and approved by the shareholders of Accuray California and the sole stockholder of Accuray Delaware in accordance with the requirements of the Delaware General Corporation Law and the California Corporations Code, respectively;
- (b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;
- (c) An executed Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and
- (d) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the California Corporations Code shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Time."

- 1.3** *Effect of the Merger.* Upon the Effective Time, the separate existence of Accuray California shall cease, and Accuray Delaware, as the Surviving Corporation, shall (i) continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Time, (ii) be subject to all actions previously taken by its and Accuray California's Boards of Directors, (iii) succeed, without other transfer, to all of the assets, rights, powers and property of Accuray California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Time, and (v) succeed, without other transfer, to all of the debts, liabilities and obligations of Accuray California in the same manner as if Accuray Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

ARTICLE II CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

- 2.1** *Certificate of Incorporation.* The Certificate of Incorporation of Accuray Delaware as in effect immediately prior to the Effective Time shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.
- 2.2** *Bylaws.* The Bylaws of Accuray Delaware as in effect immediately prior to the Effective Time shall continue in full force and effect as the Bylaws of the Surviving Corporation

until duly amended in accordance with the provisions of the Certificate of Incorporation of the Surviving Corporation, such Bylaws and applicable law.

- 2.3** *Directors and Officers.* The directors and officers of Accuray California immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation until their respective successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

ARTICLE III MANNER OF CONVERSION OF STOCK

- 3.1** *Accuray California Common Stock.* At the Effective Time, each share of Accuray California Common Stock, no par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation.
- 3.2** *Accuray California Preferred Stock.* At the Effective Time, each share of Accuray California Series A Preferred, Series A-1 Preferred, Series B Preferred and Series C Preferred, each no par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of Series A Preferred, Series A-1 Preferred, Series B Preferred and Series C Preferred, each \$0.001 par value, of the Surviving Corporation, respectively.
- 3.3** *Accuray California Options and Stock Purchase Rights.* At the Effective Time, the Surviving Corporation shall assume and continue the 1993 Stock Option Plan and the 1998 Equity Incentive Plan and all other employee benefit plans of Accuray California. Each outstanding and unexercised option or other right to purchase or security convertible into Accuray California capital stock shall become, at the Effective Time, a like option or right to purchase or a security convertible into the Surviving Corporation's capital stock on the basis of one share of the Surviving Corporation's capital stock for each share of Accuray California capital stock issuable pursuant to any such option, stock purchase right or convertible security, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Accuray California option, stock purchase right or convertible security immediately prior to the Effective Time.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights or convertible securities

equal to the number of shares of Accuray California Common Stock so reserved immediately prior to the Effective Time.

- 3.4** *Accuray Delaware Common Stock.* At the Effective Time, each share of Accuray Delaware Common Stock, \$0.001 par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Accuray Delaware, the holder of such shares or any other person,

be canceled and returned to the status of authorized but unissued shares.

- 3.5 *Exchange of Certificates.* After the Effective Time, each holder of an outstanding certificate representing shares of Accuray California Common Stock may, at such stockholder's option, surrender the same for cancellation to Latham & Watkins LLP as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which such holders' shares of Accuray California Common Stock were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofor representing shares of Accuray California Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of Accuray California Common Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Accuray California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Accuray Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to Accuray Delaware or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of Accuray Delaware that such tax has been paid or is not payable.

ARTICLE IV GENERAL

- 4.1 *Covenants of Accuray Delaware.* Accuray Delaware covenants and agrees that it will, on or before the Effective Time:
- (a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law;
 - (b) File any and all documents with the California Franchise Tax Board necessary for the assumption by Accuray Delaware of all of the franchise tax liabilities of Accuray California; and
 - (c) Take such other actions as may be required by the California Corporations Code.
- 4.2 *Further Assurances.* From time to time, as and when required by Accuray Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Accuray California such deeds and other instruments, and there shall be taken or caused to be taken by Accuray Delaware and Accuray California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Accuray Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Accuray California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Accuray Delaware are fully authorized in the name and on behalf of Accuray California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.
- 4.3 *Abandonment.* At any time before the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Accuray California or Accuray Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Accuray California or by the sole stockholder of Accuray Delaware, or by both.
- 4.4 *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of Accuray California or by the sole stockholder of Accuray Delaware shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or

change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

- 4.5 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware will be located at Corporation Service Company, 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle, Delaware 19808, and Corporation Service Company will be the registered agent of the Surviving Corporation at such address.
- 4.6 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1310 Chesapeake Terrace, Sunnyvale, California 94089, and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

4.7 *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

4.8 *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Accuray Delaware and Accuray California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

ACCURAY INCORPORATED
a Delaware corporation

By: /s/ Euan S. Thomson, Ph.D.
Euan S. Thomson, Ph.D.
President and Chief Executive Officer

ACCURAY INCORPORATED
a California corporation

By: /s/ Euan S. Thomson, Ph.D.
Euan S. Thomson, Ph.D.
President and Chief Executive Officer

[LATHAM & WATKINS LLP LETTERHEAD]

February 7, 2007

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089

Re: Initial Public Offering of Shares of Common Stock of Accuray Incorporated

Ladies and Gentlemen:

We have acted as special counsel to Accuray Incorporated, a Delaware corporation (the "*Company*"), in connection with the proposed issuance of 7,333,333 shares, together with any additional shares of such stock that may be issued by the Company pursuant to Rule 462(b) of the Securities Act of 1933, as amended (the "*Act*") (the "*Shares*") of common stock of the Company, par value \$0.001 per share (the "*Common Stock*"). The Shares are included in a registration statement on Form S-1 under the Act, filed with the Securities and Exchange Commission (the "*Commission*") on November 13, 2006 (File No. 333-138622), as amended (the "*Registration Statement*"). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus (the "*Prospectus*"), other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters.

We are opining herein only as to the Delaware General Corporation Law, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been delivered by the Company against payment therefor in the circumstances contemplated by the form of underwriting agreement filed as an exhibit to the Registration Statement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/S/ LATHAM & WATKINS LLP

QuickLinks

[Exhibit 5.1](#)

Richards, Layton & Finger

A PROFESSIONAL ASSOCIATION

One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
Fax (302) 651-7701
www.rlf.com

February 7, 2007

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 95089

Re: Accuray Incorporated
Registration Statement on Form S-1 (File No. 333-138622)
(the "Registration Statement")

Ladies and Gentlemen:

We have acted as special Delaware counsel to Accuray Incorporated, a Delaware corporation (the "Company"), in connection with the sale by certain stockholders of the Company (the "Selling Stockholders") of 8,000,000 shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock") in conjunction with the Company's initial public offering (the "IPO"). In this connection, you have requested our opinion as to a certain matter arising under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For the purpose of rendering our opinion as expressed herein, we have been furnished and have examined copies of the following documents:

- (i) the Amended and Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on February 5, 2007, as amended by the Certificate of Merger as filed with the Secretary of State on February 5, 2007, filed as exhibit 3.1 to the Registration Statement;
- (ii) the Bylaws of the Company, filed as exhibit 3.3 to the Registration Statement;
- (iii) the form of Underwriting Agreement by and among the Company, the Selling Stockholders and the Underwriters named therein, filed as exhibit 1.1 to the Registration Statement;
- (iv) the Merger Agreement, dated as of February 3, 2007, by and between the Company and Accuray Incorporated, a California corporation ("Old Accuray"), filed as exhibit 2.1 to the Registration Statement, relating to the reincorporation merger of Old Accuray with and into the Company (the "Reincorporation Merger") and the Exchange Agreements, dated as of February 5, 2005 (collectively, the "Agreements"), by and between the Company and each Selling Stockholder, relating to the Reincorporation Merger;
- (v) a certificate of an officer of the Company (including the resolutions of the Board of Directors of the Company and other exhibits thereto), dated the date hereof, as to certain matters; and
- (vi) a certificate of the Secretary of State, dated the date hereof, as to the good standing of the Company.

With respect to the foregoing documents, we have assumed: (i) the genuineness of all signatures of, and the due execution and delivery of, the officers and other persons and entities signing each of said documents as or on behalf of the parties thereto; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic or other copies or forms; and (iv) that the foregoing documents, in the

forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein.

Based upon and subject to the foregoing and upon our review of such matters of law as we have deemed necessary and appropriate in order to render our opinion as expressed herein, and subject to the assumptions, limitations, exceptions and qualifications set forth herein, it is our opinion that, as of the date hereof, the issued and outstanding shares of Common Stock to be sold by the Selling Stockholders in conjunction with the IPO have been duly authorized for issuance by all necessary action of the Company and are validly issued, fully paid and non-assessable under the General Corporation Law.

We are admitted to practice law in the State of Delaware and do not hold ourselves out as being experts on the law of any other jurisdiction. The foregoing opinion is limited to the General Corporation Law, and we have not considered and express no opinion on the effect of any other laws or the laws of any other jurisdiction, including federal laws regulating securities or other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

We understand that this opinion may be filed with the Securities and Exchange Commission in connection with the Company's registration of shares of Common Stock under the Securities Act of 1933, as amended (the "Securities Act") pursuant to a registration statement on Form S-1 (the "Registration Statement"). We hereby expressly consent to such filing and the use of our name as counsel in such Registration Statement. In giving the foregoing consents, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder. Except as set forth in the two immediately preceding sentences, the foregoing opinion is rendered solely for your benefit (and for the benefit of persons entitled to rely on it pursuant to the applicable provisions of the federal securities laws) in connection with the matters addressed herein.

Very truly yours,

/s/ RICHARDS, LAYTON & FINGER, P.A.

MJG/JMZ

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[Exhibit 5.2](#)

MANUFACTURING LICENSE
AND TECHNOLOGY TRANSFER AGREEMENT

January 28, 1991

MANUFACTURING LICENSE AND TECHNOLOGY TRANSFER AGREEMENT

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This Manufacturing License and Technology Transfer Agreement (“Agreement”) is made and entered into this 28th day of January, 1991, by and between Schonberg Radiation Corporation, a California corporation having its principal place of business in Santa Clara, California (“Company”), and Accuray Associates, a California limited partnership having its principal place of business in Santa Clara, California (“Licensee”).

WHEREAS, the Company is engaged in the business of designing, engineering, manufacturing and selling linear accelerator products; and

WHEREAS, the Company has acquired extensive know-how and related technical information with respect to such products; and

WHEREAS, the Company has developed and is the exclusive owner of certain proprietary information, intellectual property rights and know-how related to such products;

WHEREAS, Licensee wishes to manufacture, modify, use, sell, reproduce and distribute products utilizing the Company’s proprietary information, intellectual property rights, know-how and related technical information; and

WHEREAS, Licensee desires to obtain from the Company an exclusive, worldwide license, subject to field of use restrictions, to use all of the Company’s intellectual property to manufacture, reproduce, modify, use, sell and otherwise distribute its products; and

WHEREAS, Licensee wishes to acquire ownership of certain technology which may be developed with funds obtained by the Company through certain government grants.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Definitions. As used herein:

(a) Documentation. The term “Documentation” shall mean any and all of the documents in the Company’s possession relating to the manufacture, testing, use, sale or other distribution of the Licensed Product.

(b) Exercise Date. The term “Exercise Date” shall mean the date on which any of the conditions set forth in paragraph 3 (“Exercise Preconditions”) hereof are satisfied.

(c) Improvements. The term “Improvements” shall mean any improvements, enhancements, adaptations, modifications or derivations, whether or not patentable.

(d) Licensed Copyrights. The term “Licensed Copyrights” means any registered or unregistered copyrights of the Company as such exist on the Exercise Date that are relevant to, or may be reasonably required for, or in connection with, the development, design, manufacture, reproduction, testing, modification, application, use, sale or other distribution of the

Licensed Product and the modification, translation, reproduction and distribution of the Documentation.

(e) Licensed Know-How. The term “Licensed Know-How” shall mean any and all software, techniques, methods, drawings, formulae, specifications, designs, toolings, skills, concepts, trade secrets, vendor lists, technical and applications information and know-how existing on the Exercise Date, and all documentation or written or recorded data in the possession of the Company on the Exercise Date, whether patented or not, that are relevant to, or may be reasonably required for, or in connection with, the development, design, manufacture, reproduction, modification, testing, application, use, sale or other distribution of the Licensed Product.

(f) Licensed Patents. The term “Licensed Patents” means (i) any United States or foreign applications filed by the Company which are based on the Licensed Know-How; (ii) any foreign patent applications based upon said United States patent applications; (iii) any additions, continuations, continuations-in-part, divisions, reissues or extensions based thereon; and (iv) any United States or foreign patent or other intellectual property rights obtained from any of said United States or foreign patent applications.

(g) Licensed Product. The term “Licensed Product” shall mean the hardware product described on the attached Exhibit 1 as modified or enhanced from time to time by (i) all Improvements thereto developed by the Company prior to the Exercise Date and (ii) all Improvements thereto developed by Licensee at any time.

(h) Licensed Rights. The term “Licensed Rights” shall mean the Company’s Licensed Know-How, Licensed Patents and Licensed Copyrights.

(i) Medical Applications. The term “Medical Applications” shall mean any and all applications involving x-ray and electron treatments which utilize stereotaxic localization for the definition of target volumes including radiosurgery and stereotaxic radiotherapy.

2. License Grant.

(a) Manufacturing License. The Company grants to Licensee a perpetual, exclusive, worldwide license, subject to the right to exercise such rights set forth in paragraph 3 (“Exercise Preconditions”) to use the Licensed Rights and Licensed Know-How (including any Improvements thereto developed by the Company prior to the Exercise Date) to manufacture (or have manufactured pursuant to paragraph 8 (“Subcontracting”) hereof) Licensed Products for Medical Applications and an exclusive worldwide license to use, sell or otherwise distribute, make Improvements to, and repair such Licensed Products; provided, however, that the Company retains the right to manufacture the Licensed Products for sale to Licensee pursuant to the terms of the Purchase Agreement (as defined below) and all rights to the Licensed Product for applications other than Medical Applications.

(b) Documentation. The Company grants to Licensee a perpetual, nonexclusive, worldwide license to use, reproduce, modify, translate and distribute the Documentation pursuant to the terms of this Agreement.

3. Exercise Preconditions. Licensee may only exercise its rights under paragraph 2 (“License Grant”) under any of the following circumstances:

(a) Insolvency, Bankruptcy. The insolvency of the Company or the commencement by or against the Company of any case or proceeding under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of debtors which case or proceeding is not dismissed within thirty (30) days after a petition is first filed against the Company.

(b) Inadequate Supply. The Company at any time becomes unwilling or unable to supply products under that certain OEM Purchase Agreement dated January 28, 1991 between the Company and Licensee (the “Purchase Agreement”) in a sufficient quantity to meet Accuray’s requirements. The parties agree that the Company’s failure to meet Accuray’s delivery requirements within 45 business days after the delivery date scheduled pursuant to the terms of the Purchase Agreement shall be deemed to be conclusive evidence of the Company’s inability to meet Licensee’s requirements.

(c) Acquisition of Company. The Company is acquired through a merger, sale of all or substantially all of its assets or a purchase of more than fifty percent of its outstanding capital stock by a person or persons not affiliated with the Company as of the date of this Agreement.

(d) Breach of Purchase Agreement. The Company is in material breach under the terms of the Purchase Agreement.

(e) Six (6) Months Notice. Six (6) months after Licensee delivers written notice to the Company that it intends to exercise its right to manufacture (or have manufactured) the Licensed Product; provided, that in such event the Licensee shall purchase from the Company at its cost all of the Company’s remaining inventory related to the manufacture of the Licensed Products which is not useable by the Company in the manufacture of the Company’s products for sale to customers other than the Licensee.

4. Improvements.

(a) Company Improvements. Subject to Licensee’s rights under paragraph 2 (“License Grant”), the Company shall own the entire right, title and interest to all Improvements developed by it. However, the Company shall, during the term hereof, promptly disclose such Improvements to Licensee and upon the request of Licensee, shall enter into good faith negotiations with Licensee for a license to such Improvements which are developed after the Exercise Date.

(b) Licensee Improvements. Licensee shall own the entire right, title and interest to Improvements developed by it. However, Licensee shall, during the term hereof, promptly disclose such Improvements to the Company and, upon the request of the Company, shall enter into good faith negotiations for a license to such Improvements.

3

5. Royalties.

(a) Amount of Payment. Licensee shall pay to the Company a royalty of \$25,000 for each Licensed Product manufactured by Licensee, or by a third party on Licensee’s behalf, which is sold or otherwise distributed (a “Royalty Bearing Product”) until such time as the Maximum Royalty Amount (as defined below) has been paid to the Company under this Agreement; provided, however, that the Maximum Royalty Amount shall be reduced by the full amount of any research and development costs which are paid for by Licensee under the terms of the Purchase Agreement in connection with the delivery of the Initial Units (as defined in the Purchase Agreement). The Maximum Royalty Amount shall be calculated as follows: (i) if the Exercise Date occurs on or prior to the fifth anniversary of the date hereof, the Maximum Royalty Amount shall be \$2,500,000 and (ii) if the Exercise Date occurs after the fifth anniversary of the date hereof, the Maximum Royalty Amount shall be \$3,750,000, \$1,500,000 of which shall be paid by the Licensee in a lump sum payment upon delivery by the Company of the Documentation. Upon payment in full for the royalties accrued during such period, the licenses granted under this Agreement shall become fully-paid and royalty-free.

(b) Payment Terms. Royalties shall be paid within twenty (20) business days after the end of each quarter during which Licensee ships a Royalty Bearing Product to any user. Concurrently with the royalty payment, Licensee shall submit to the Company a written report for the preceding calendar quarter setting forth the total number of Royalty Bearing Products shipped during the quarter, and a calculation of the total royalties owed to the Company for such quarter.

(c) Records. Licensee shall keep accurate records of the Royalty Bearing Products for a minimum of three (3) years from shipment in sufficient detail to enable the royalties payable to the Company to be determined accurately. To enable the Company from time to time to determine the accuracy of such records, Licensee shall permit an independent certified public accountant, acceptable to both parties, to inspect its pertinent records following reasonable notice and during reasonable business hours, not more frequently than annually. To protect Licensee’s confidential business information, the report of such accountant to the Company shall be confined solely to statements regarding the accuracy of royalty payments made to the Company by Licensee. Except as specified below, such inspections shall be at the expense of the Company. If such inspection discloses an underpayment of more than 5%, Licensee shall reimburse the Company for the cost of such inspection and shall promptly pay the Company all previously unpaid amounts plus interest thereon at the rate of eighteen percent (18%) per annum or the highest interest rate permitted by law, whichever is lower. The Company’s inspection rights pursuant to this paragraph shall terminate two (2) years after the licenses granted under this Agreement become fully-paid and royalty-free.

(d) Taxes. Licensee further agrees to pay any sales, use, excise, value added, or similar tax not based on the Company’s income which the Company may incur to any state in respect of this Agreement if the Company submits an invoice to Licensee on a timely basis reflecting the amount of any such tax. If a resale certificate or other certificates or document of exemption is required in order to exempt any transaction under this Agreement from sales or use tax liability, Licensee will promptly furnish such certificate or document to the Company.

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6. Duties of Company.

(a) Delivery of Documentation. The Company agrees to furnish to Licensee all current versions of Documentation then existing within ten (10) business days after the Exercise Date; provided, however, that if the Licensee exercises its rights under subparagraph 3(e) ("Six Months Notice") above, the Company will furnish the Documentation to Licensee at least sixty (60) days prior to the Exercise Date. If Documentation is provided to Licensee prior to the Exercise Date, the Company shall be required to provide any updates or modifications to such Documentation which are made prior to the Exercise Date within ten (10) business days after the Exercise Date.

(b) Training. The Company will furnish help to Licensee in the form of transfer of the Licensed Rights and instruction in the manufacture of the Licensed Products by providing free of charge, 500 person-hours of a qualified person's time for engineering know-how, manufacturing know-how, and service know-how, at times reasonably requested by Licensee during the first eighteen (18) months after the Exercise Date. In addition, during the first two (2) years after the Exercise Date, Licensee shall have the right to purchase from the Company additional consultation services at the Company's standard engineering, manufacturing or service consultant rate in effect at the time of the request. At Licensee's request, the Company will provide this training at Licensee's premises, provided that Licensee will pay all reasonable transportation and living expenses for training at any facility which is more than fifty (50) miles from the Company's principal place of business.

(c) Visitation Rights. Upon reasonable advance notice during the first two (2) years after the Exercise Date and provided that Licensee's manufacturing license under paragraph 2 ("License Grant") remains in effect, the Company shall allow Licensee's personnel to visit the Company's place of business and discuss and inspect the Company's method of manufacturing the Licensed Product and related matters concerning the technology transferred to Licensee hereunder.

7. Rights Under Government Grants.

(a) Subcontract of Research and Development. The Company has submitted a proposal entitled "Computer Mediated Stereotaxic Radiosurgery" to the Department of Health and Human Services for a Phase II Small Business Innovation Research Grant (the "SBIR Grant"). In addition, the Company is a Private Sector Participant along with Stanford University in a project entitled "Computer Mediated Stereotaxic Radiosurgery" which is being funded by a California Competitive Technology Grant (the "CCT Grant"). If the Company is awarded the SBIR Grant, it will subcontract to Licensee the maximum amount which it is entitled for research and development to be conducted under the SBIR Grant. In addition, the Company will use Licensee's employees as consultants wherever possible and appropriate. The Company also agrees to consult with Licensee in the selection of equipment to be purchased with funds from the SBIR Grant and will transfer to Licensee, upon completion of the research and development, all computer equipment and related equipment purchased with the SBIR Grant, subject to the rights of the U.S. Government to such equipment under the SBIR Grant.

(b) Inclusion in Licensed Rights. Any patent applications, copyrights, trade secrets or other intellectual property rights which result from the research and development under

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the SBIR Grant and/or the CCT Grant and which directly relate to the manufacture of the Licensed Products shall be included in the definition of Licensed Rights.

(c) Technology Transfer. The Company will transfer and assign to Licensee all right, title and interest which it acquires at any time in any patents, patent applications, copyrights, trade secrets or other intellectual property which results from the research and development conducted utilizing the SBIR Grant and/or the CCT Grant and is not directly related to the manufacture of the Licensed Products or other linear accelerator devices.

8. Subcontracting. Licensee shall have the right to contract with a third party to manufacture all or any part of the Licensed Product for Licensee's exclusive benefit so long as such subcontractor agrees to the same obligations and limitations as are imposed upon Licensee in the manufacture of the Licensed Product under this Agreement, including the Company's termination rights set forth in paragraph 13 ("Termination") hereof; provided, however, that if Licensee has exercised its rights under Paragraph 2 ("License Grant") pursuant to Paragraph 3(c) ("Acquisition of Company") or Paragraph 3(e) ("Six (6) Months Notice"), Licensee shall not be entitled, without the prior written consent of the Company, to use any subcontractor to manufacture the Licensed Products which manufactures X-Band linear accelerators for the industrial market. Licensee agrees that a breach by its subcontractor of the obligations and limitations of this Agreement shall be deemed to be a breach by Licensee under this Agreement.

9. Indemnification.

(a) Infringement of Proprietary Rights. In the event that a third party makes any claim, which the Licensee reasonably believes to be valid, that (i) the manufacture, reproduction, use, sale or other distribution of the Licensed Product or any part or component thereof, and/or (ii) the use, reproduction or distribution of the Documentation infringes, violates or misappropriates the intellectual property rights of any third party, the Company will use its best efforts to modify the design of the Licensed Product at no cost to the Licensee so that is no longer infringing and continues to comply with the Specifications in all materials respects; provided, however, that this obligation will not cover any claim that the Licensed Product infringes any third party's rights as used in combination with any software or hardware not supplied by the Company, if that claim could have been avoided by the use of the Licensed Product alone or with other software or hardware. In the event that the Company is unable, after using its best efforts, to modify the design of the Licensed Product so that it is no longer infringing, Licensee shall be entitled to offset against any portion of the Maximum Royalty Amount which remained unpaid as of the date on which Licensee gives the Company notice of the third party claim, any royalties or lump sum payments made by Licensee to the party claiming that the Licensed Product infringes its intellectual property rights.

(b) Breach of Representations and Warranties. The Company agrees to indemnify and hold Licensee and its affiliates harmless from any loss, cost, damage or expense (collectively a "Loss") suffered by Licensee and/or its affiliates to the extent such Loss arises from a breach of the Company's representations and warranties contained in Section 10 ("Representations and Warranties") of this Agreement.

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10. Representations and Warranties.

(a) Authority. Each party represents and warrants that: (i) it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement and (ii) this Agreement is a valid and binding obligation of such party, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights and rules or laws concerning equitable remedies.

(b) No Conflicts. The Company represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate or conflict with or constitute a material default under any agreement, license or other instrument to which the Company is a party or by which it is bound. The Company further represents and warrants that it has not granted to any third party any rights or licenses to the Licensed Rights, or any portion thereof, for Medical Applications.

(c) Ownership. The Company represents and warrants that it is the owner and holder, or licensee, of the Licensed Rights, that it has the authority to grant a license thereto, and that it has no knowledge of any facts which might lead to a claim of infringement of any patent, copyright, trade secret or other proprietary rights of any third party as a result of this Agreement or any acts contemplated by this Agreement.

(d) Government Grants. The Company will use its best efforts to obtain the SBIR Grant and shall take all actions which are necessary and proper to limit, to the extent possible, the rights of any third party, including any governmental agency, in the technology developed pursuant to such grant.

(e) Adequate Documentation. The Company represents and warrants that the Documentation delivered in accordance with subparagraph 6(a) ("Delivery of Documentation") is in accordance with good commercial practice and is sufficient in detail to enable the Company to manufacture the Licensed Product as it exists on the Exercise Date.

11. The Company's Vendors. The Company has no contracts, agreements, understandings or arrangements of any kind with any of its vendors which prevent, or will prevent, Licensee from buying directly from any such vendor any standard commercial parts or assemblies necessary to assemble the Licensed Products. The Company will furnish its vendor list to Licensee within ten (10) business days following the Exercise Date; provided, however, that if the Licensee exercises its rights under paragraph 3(e) ("Six Months Notice") above, the Company shall provide such list to Licensee sixty (60) days prior to the Exercise Date.

12. Limitation of Liability. NEITHER LICENSEE NOR THE COMPANY SHALL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY LOST REVENUE, LOST PROFITS OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES UNDER ANY LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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13. Termination.

(a) Company's Rights. The Company shall have the right to terminate this Agreement and to terminate its further obligations hereunder upon the occurrence of any of the following events (subject to Licensee's ability to cure or remedy such event as described in subparagraph 13(c) ("Cure Period")):

- (i) A material default by Licensee under any provision of this Agreement; or
- (ii) The commencement by or against Licensee of a case or proceeding under any bankruptcy, reorganization, insolvency or moratorium law or any other law or laws for the relief of creditors, which case or proceeding is not dismissed within thirty (30) days after the first petition is filed; or
- (iii) Cessation of all or substantially all of its Licensee's business operations at any time after July 1, 1991, unless such operations are continued by a successor or assign under subparagraph 19(f) ("Assignment") below; or
- (iv) The eighth anniversary of the date hereof if the Licensee has not exercised its rights under Paragraph 2 hereof ("License Grant") prior to such date.

(b) Licensee's Rights. Licensee shall have the right to terminate this Agreement and to terminate its further obligations hereunder upon the occurrence of a material default by the Company under Section 6 ("Duties of the Company") or Section 10 ("Representations and Warranties") of this Agreement (subject to the Company's ability to cure or remedy such event as described in subparagraph 13(c) ("Cure Period") below).

(c) Cure Period. Upon the occurrence of any event entitling a party to terminate this Agreement and its further obligations under this Agreement, and if such party wishes to terminate its further obligations under the Agreement, the party shall send notice of termination, specifying the nature of the default, to the other party and shall permit at least thirty (30) days following receipt of such notice to enable the other party to cure the problem. Failure to cure the problem shall result in termination without further notice by the notifying party, unless such notifying party extends the cure period by written notice.

(d) Licensee's Remedy Upon Termination. Upon Licensee's termination of this Agreement, Licensee's sole and exclusive remedy hereunder shall be the receipt of a perpetual right to manufacture, have manufactured (pursuant to Paragraph 8 ("Subcontracting")), make Improvements to repair, sell or otherwise distribute the Licensed Product, to use, reproduce, modify and distribute the Documentation and to use the Licensed Rights and Licensed Know-How without any additional payments to the Company, other than royalty payments owed to the Company for Licensed Products manufactured prior to termination, regardless of whether such Licensed Products have been shipped to a user prior to termination, which shall be paid within twenty (20) days after the end of the quarter in which the Licensed Products are shipped to a user.

(e) The Company's Remedy Upon Termination. Upon the Company's termination of this Agreement, Licensee shall immediately cease using the Licensed Rights and shall deliver a certificate to the Company by a duly authorized representative of Licensee stating

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that it no longer has any right to use the Licensed Rights of the Company or to manufacture or have manufactured the Licensed Product, and that the original and all copies of any information furnished by the Company hereunder have either been destroyed or returned to the Company; provided, however, that Licensee shall have the right to dispose of its inventory of the Licensed Product manufactured prior to the effective date of termination conditioned upon payment of the royalties set forth in Paragraph 5 (“Royalties”) hereof. Licensee shall have the right to continue to lease Licensed Products which were being leased to customers at the time of termination.

(f) Rights of Third Parties. Any termination of this Agreement shall not in any way affect the right of prior recipients of the Licensed Products from continuing to use such products after such termination.

14. Termination of Exclusivity. If the Licensee has not sold or otherwise distributed a minimum of thirty (30) systems incorporating Royalty Bearing Products (whether manufactured pursuant to the terms of this Agreement or purchased pursuant to the terms of the Purchase Agreement) (“Licensee Systems”) prior to March 31, 1997, the manufacturing license granted in subparagraph 2(a) (“Manufacturing License”) above shall become non-exclusive; provided, however, that in lieu of losing its exclusive rights under this Agreement, Licensee may, at its option, elect to make a cash payment to the Company in an amount equal to \$25,000 multiplied by the difference between thirty (30) and the number of Licensee Systems which Licensee has sold or otherwise distributed, which payment shall be credited in full against the Maximum Royalty Amount. Thereafter, the manufacturing license shall remain exclusive provided that in each successive twelve (12) month period, until the Maximum Royalty Amount is paid, Licensee sells or otherwise distributes at least twenty (20) Licensee Systems.

15. Arbitration.

(a) Procedure. Except as provided in subparagraph (b) (“Injunctive Relief”) below, any controversy or claim arising out of or related to this Agreement, or the breach hereof, will be settled by arbitration before one arbitrator in Santa Clara County, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration hearing will commence within ninety (90) days after appointment of the arbitrator. Unless the arbitrator finds that exceptional circumstances justify delay, the hearing will be completed and an award will be rendered in writing within ninety (90) days after commencement of the hearing. The arbitrator may include in the award the prevailing party’s costs of arbitration and reasonable fees of attorneys, accountants and other professionals connected with the arbitration.

(b) Injunctive Relief. Either party shall have the right to seek and obtain preliminary and/or final injunctive relief in any court of competent jurisdiction for any dispute relating to the actual or threatened violation of its proprietary rights or any unauthorized use of the Licensed Rights.

16. Escrow of Documentation. The Company agrees to place in escrow (the “Escrow”) with an independent third party escrow agent reasonably acceptable to the Licensee (the “Escrow Agent”) within ninety (90) days of the date on which the Licensee obtains financing in the amount of at least \$1,700,000, one copy of the Documentation as it exists on that date.

After the Company has delivered the first Initial Unit (as defined in the Purchase Agreement), the Documentation in the Escrow shall be revised or replaced to reflect the as built design requirements of the technology to be provided to the Licensee. In addition, the Company agrees to update the Documentation contained in the Escrow to reflect any Improvements and other modifications to the Licensed Product once each calendar year until the Exercise Date. The agreement between the Company, the Licensee and the Escrow Agent shall provide for the release of the Documentation at the request of the Licensee at any time on or after the date on which the Company is required to deliver the Documentation in accordance with subparagraph 6(a) (“Delivery of Documentation”) of this Agreement. All costs and expenses related to establishing and maintaining the Escrow shall be borne by the Licensee.

17. Patent Protection.

(a) Patent Enforcement. If the Company fails to bring and diligently prosecute suits for infringement of the Licensed Patents within sixty (60) days after a written request by Licensee to bring such action; Licensee shall have a right to bring a suit for infringement of the Licensed Patents in its own name and at its own expense if Licensee can reasonably demonstrate that such infringements have had or will have an adverse impact on the business being exploited by Licensee under the licenses granted herein. If an infringement suit is brought by Licensee under this paragraph, Licensee shall be entitled to retain all costs and damages awarded.

(b) Maintenance. The Company shall pay all maintenance fees required under any law or regulation to maintain the enforceability of the Licensed Patents during the term of this Agreement. If the Company decides not to pay any such maintenance fees, it shall provide Licensee with written notice of such intention within a sufficient period of time for Licensee, if it so elects, to pay such maintenance fees. Any fee paid by Licensee under this paragraph shall be offset against its royalty obligations under Section 5 (“Royalties”).

(c) Notice of New Patents. The Company shall give Licensee prompt written notice of any patent applications filed and patents issued subsequent to the date hereof which fall within the scope of Licensed Patents.

18. Confidential Information.

(a) Definition. “Confidential Information” means any information, technical data, or know-how, related to any aspect of either party’s business, including, but not limited to, research, products, proposals, software, services, development, inventions, processes, designs, drawings, engineering, marketing, customer lists, vendor lists and finances, which is disclosed by one party to the other, either directly or indirectly, in writing, orally or by drawings, plans or inspection of products, materials, parts or equipment, provided that any Confidential Information disclosed orally or visually must be reduced to writing within ten (10) days and delivered to the receiving party, and all Confidential Information, other than that given orally, must be marked “Confidential.” “Confidential Information” does not include any such information, technical data, or know-how which:

(i) is already or otherwise becomes publicly known, other than as a result of any action or inaction of the receiving party;

- (ii) is in the receiving party's possession prior to disclosure by the disclosing party as can be shown by the receiving party's files and records immediately prior to disclosure;
- (iii) is approved for release by written authorization of the disclosing party;
- (iv) is required to be disclosed by law or competent governmental authority;
- (v) is in the receiving party's possession as a result of disclosure by a third party who did not violate any restrictions on disclosure in connection therewith; or
- (vi) is independently developed by the disclosing party without any reliance on the Confidential Information of the other party, as can be shown by the disclosing party's files and records immediately prior to the disclosure.

(b) Nondisclosure Obligations. Each party agrees to protect the confidentiality of all Confidential Information of the other party, and to take all reasonable steps to prevent unauthorized disclosure or use of the Confidential Information of the other party and to prevent it from falling into the public domain or the possession of unauthorized persons. Each party agrees not to disclose any Confidential Information of the other party to third parties (other than as expressly provided herein or in the Purchase Agreement), and to disclose to its employees, contractors, consultants or sublicensees only such Confidential Information of the other party as is necessary to each person's responsibilities in performing pursuant to the provisions of this Agreement or the Purchase Agreement, and then only if such person is bound by a confidentiality agreement containing terms substantially similar to those contained in this Section 18 ("Confidential Information"). Each party shall promptly advise the other party of any misappropriation or misuse by any person of any Confidential Information of such other party.

(c) Survival. The provisions of this Section 18 ("Confidential Information") shall survive the termination or cancellation of this Agreement for a period ending ten (10) years from the date first above written, and shall apply with equal force to any Confidential Information of either party acquired by the other prior to the date of this Agreement.

19. General Provisions.

(a) Notices. All notices and requests required or authorized by this Agreement shall be given in writing and shall be conveyed by personal delivery or by certified mail, return receipt requested, addressed to the other party as designated below. The notice shall be deemed to have been given upon personal delivery or three (3) days after deposit in the mail. Notices to Licensee shall be addressed as follows:

Accuray Associates
 c/o Accuray Incorporated
 3300 Keller Street, Building 101
 Santa Clara, CA 95054
 Attn: President

Notices to the Company shall be addressed as follows:

Schonberg Radiation Corporation
 3300 Keller Street, Building 101
 Santa Clara, CA 95054
 Attn: President

(b) Waiver. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

(c) Severability. If any term, provision, covenant or condition of this Agreement is held invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the parties agree to substitute a valid provision with the same intent and economic effect.

(d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by, and construed under, the laws of the State of California, without giving effect to the principles of conflict of laws.

(e) Attorney's Fees. If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive its attorneys' fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

(f) Assignment. Neither party shall assign any rights or obligations hereunder without the prior written consent of the other party, except that Licensee may assign its rights and obligations to a third party pursuant to a merger, sale of all or substantially all of Licensee's assets, or other reorganization (including, but not limited to, a reorganization of Licensee into a corporation) provided that such third party agrees in writing to assume all of Licensee's obligations hereunder and to be bound by all of the restrictions contained herein. Subject to the above restrictions on assignment, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties.

(g) Export Control. Licensee agrees that it will not re-export from the United States any of the Licensed Product, Licensed Rights or Documentation in any form, without the prior written consent of any agency of the Government of the United States, where such consent is necessary.

(h) Entire Agreement. This Agreement and the Purchase Agreement contain the entire understanding of the parties with respect to the matters contained herein and therein. There are no promises, covenants, or undertakings other than those expressly set forth herein or therein. This Agreement may not be modified except by a writing of even date herewith or subsequent hereto signed by authorized representatives of both parties.

(i) Independent Contractor. The relationship between the Company and Licensee shall be that of independent contractors. Nothing contained herein shall be construed to

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imply a joint venture, principal or agent relationship, or other joint relationship, and neither party shall have the rights, power or authority to create any obligation, express or implied, on behalf of the other.

(j) Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on the account of fire, flood, earthquake or other casualty, labor disputes, shortages, riots, insurrections, acts of God, war or any other cause which is beyond the reasonable control of such party; provided, however, that any delay as a result of a cause specified under this paragraph which continues for a period of more than ninety (90) days shall entitle the other party to terminate the Agreement in accordance with Section 13 ("Termination").

(k) Section Headings. The headings used in this Agreement are for convenience of reference only and shall not be interpreted or construed to modify or alter any of the terms hereof.

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IN WITNESS WHEREOF, the parties hereto cause this Agreement to be signed by their duly designated representatives.

COMPANY:

LICENSEE:

SCHONBERG RADIATION
CORPORATION

ACCURAY ASSOCIATES

By: Accuray Incorporated, General
Partner

By: /s/ Russell G. Schonberg
(Authorized signatory)

By: /s/ Joseph G. Depp
(authorized Signatory)

Printed Name: Russell G. Schonberg

Printed Name: Joseph G. Depp

Title: CEO

Title: President

Date: 1/30/91

Date: 1/30/91

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AMENDMENT

Made and entered into this 15th day of April, 1996, by and between SCHONBERG RESEARCH CORPORATION, a California corporation, the name of which was previously Schonberg Radiation Corporation, having its principal place of business at 3300 Keller Street, Building #101, Santa Clara, California 95054 (sometimes called "SRC" or "Company"), and ACCURAY INCORPORATED, a California corporation which was the general partner in and is the successor to Accuray Associates, a California limited partnership, having its principal office at 570 Del Rey Avenue, Sunnyvale, California 94087 (sometimes called "Accuray," "Buyer" or "Licensee").

The agreements between the parties which are amended hereby are:

Manufacturing License and Technology Transfer Agreement dated January 28, 1991 between Schonberg Radiation Corporation and Accuray Associates (hereinafter called the "License") and,

OEM Purchase Agreement between Schonberg Radiation Corporation and Accuray Associates dated January 28, 1991 (hereinafter called the "Purchase Agreement.")

The License and the Purchase Agreement are sometimes referred to herein as the "Agreements." Initially capitalized terms herein are intended to have the meanings given them in the Agreements.

RECITALS

Under the Agreements, SRC has built (or is in the process of building) six Licensed Products which have been (or are in the process of being) incorporated into six frameless stereotactic radiosurgery devices (variously called the "Neurotron 1000" or the "CyberKnife") assembled and sold to

providers of medical treatment by Accuray.

Unforeseen difficulties have caused delays and performance problems for the parties.

While their expectations have changed in some respects, the parties nevertheless wish to maintain a business relationship between them as described in the Agreements, but to amend the Agreements to be consistent with their experience over the past five-plus years and with their changed expectations.

AGREEMENT

In consideration of the foregoing, and of the promises contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. In the first paragraph on page 1 of both Agreements, "Schonberg Radiation Corporation" is amended to read "Schonberg Research Corporation," and "Accuray Associates, a California limited partnership having its principal place of business in Santa Clara, California" is amended to read "Accuray Incorporated, a California corporation having its principal place of business in Sunnyvale, California."

2. Paragraph 3.2 of the Purchase Agreement is amended and restated in its entirety to read as follows:

3.2 Scope of Rights. Subject to the terms and conditions of this Agreement, SRC hereby grants Buyer, and Buyer accepts, the exclusive, worldwide right to distribute, install, maintain and repair the Product for Medical Applications and the nonexclusive, worldwide right to reproduce and distribute the Documentation (as defined below). Buyer's exclusive rights under this Agreements shall continue so long as Buyer continues to have exclusive rights under the Manufacturing License and Technology Transfer Agreement between SRC and Buyer dated January 28, 1991, as amended.

3. Paragraph 2.(a) of the License is amended and restated in its entirety to read as follows:

2. License Grant

(a) Manufacturing License. The Company grants to Licensee a perpetual, exclusive, worldwide license to use the Licensed Rights and Licensed Know-How (including any Improvements thereto developed by the Company) to manufacture (or have manufactured pursuant to paragraph 8 ["Subcontracting"] hereof) Licensed Products for Medical Applications and a perpetual, exclusive worldwide license to use, sell or otherwise distribute, make Improvements to, and repair such Licensed Product; provided, however, that the Company retains all rights to the Licensed Product for applications other than Medical Applications.

4. Section 3 of the License is deleted in its entirety and replaced by the statement, "This section intentionally omitted" so as to avoid renumbering subsequent sections.

5. Paragraph 5.(a) of the License is amended and restated in its entirety to read as follows:

5. Royalties.

(a) Amount of Payment. Licensee shall pay to the Company a royalty of \$25,000 for each Licensed Product manufactured by Licensee, the Company, or by a third party on Licensee's behalf, after 1 April 1996 which is sold or otherwise distributed (a "Royalty Bearing Product") until such time as the Maximum Royalty Amount (\$2,500,000) has been paid to the Company under this Agreement; provided, however, that the Maximum

Royalty Amount shall be reduced by the full amount of any research and development costs which are paid for by Licensee under the terms of the Purchase Agreement in connection with the delivery of the Initial Units (as defined in the Purchase Agreement). Upon payment in full of the Maximum Royalty Amount as so reduced, the licenses granted under this Agreement shall become fully-paid and royalty-free.

6. Paragraph 13.(a)(iv) of the License is deleted in its entirety and replaced by the statement, "This paragraph intentionally omitted" so as to avoid renumbering subsequent paragraphs.

7. Section 14. of the License is amended and restated in its entirety to read as follows:

14. Termination of Exclusivity. The manufacturing license granted in subparagraph 2(a) ("Manufacturing License") shall become non-exclusive if Licensee fails to make cumulative total royalty payments as shown below. All royalty payments made according to paragraph 5 hereof shall be creditable against the cumulative minimum royalty requirement; if such payments are less than the cumulative minimum royalty. Licensee shall have the right to pay the difference and it shall be creditable against future royalties due under paragraph 5.

<u>AS OF</u>	<u>CUMULATIVE ROYALTY</u>
March 31, 1997	\$ 25,000
June 30, 1997	\$ 50,000
September 30, 1997	\$ 75,000
December 31, 1997	\$ 100,000
March 31, 1998	\$ 125,000
June 30, 1998	\$ 150,000
September 30, 1998	\$ 175,000
December 31, 1998	\$ 200,000

March 31, 1999	\$	225,000
June 30, 1999	\$	250,000
September 30, 1999	\$	275,000
December 31, 1999	\$	300,000
March 31, 2000	\$	325,000
June 30, 2000	\$	350,000
September 30, 2000	\$	375,000
December 31, 2000	\$	400,000
March 31, 2001	\$	450,000
June 30, 2001	\$	500,000
September 30, 2001	\$	550,000
December 31, 2001	\$	600,000

8. In paragraph 18.1 of the Purchase Agreement and in paragraph 19.(a) of the License, the names and addresses of the parties are amended to read as follows:

Schonberg Research Corporation
3300 Keller Street, Bldg. #101
Santa Clara, CA 95054

Accuray Incorporated
570 Del Rey Avenue
Sunnyvale, CA 94087

9. In the signature blocks on page 15 of the License and on page 16 of the Purchase Agreement, "SCHONBERG RADIATION CORPORATION" is amended to read "SCHONBERG RESEARCH CORPORATION", and "ACCURAY ASSOCIATES By: Accuray Incorporated, General Partner" is amended to read "ACCURAY INCORPORATED."

10. EXHIBIT 1 to the License and EXHIBIT A to the Purchase Agreement are hereby amended and restated in their entirety to read as follows:

EXHIBIT 1/EXHIBIT A

LICENSED PRODUCT/PRODUCT

The Licensed Product/Product will consist of:

1. A 6 MeV standing-wave X-band linear accelerator, with appropriate rf power source, modulator, and supporting electronics.
2. A primary collimator to restrict the radiation field to a maximum of 60 mm diameter at the treatment distance.
3. A dual dosimetry ion chamber system which will monitor the radiation exposure and terminate the exposure upon delivering a predetermined amount of radiation.
4. A control system which can be interfaced to the Neurotron 1000 control system.

11. Except as expressly amended above, the Agreements shall remain in full force and effect, and the parties shall be deemed to have substantially complied with their obligations under the Agreements up to and including the date first above written.

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed and attested by their respective officers, duly authorized thereunto, on the day and year first above written.

Attest: SCHONBERG RESEARCH CORPORATION

/s/ [Signature illegible] By: /s/ Bruce G. Schonberg

Attest: ACCURAY INCORPORATED

/s/ Bruce Bowden By: /s/ Donald Caddes
Secretary President

LICENSED PRODUCT

The Licensed Product will consist of:

1. A 4 MeV standing-wave X-Band linear accelerator, with appropriate rf power source, modulator, and supporting electronics.
2. A primary collimator to restrict the radiation field to a maximum of 60 mm diameter at the treatment distance.
3. A dual dosimetry ion chamber system which will monitor the radiation exposure and terminate the exposure upon delivering a predetermined amount of radiation.
4. A set of secondary collimators providing circular field sizes, ranging from 5 mm to 35 mm in diameter.
5. A control system which can be interfaced to the Neurotron 1000 control system.

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11 November 2002

Russell G. Schonberg
Schonberg Research Corporation
P.O. Box S
Los Altos, CA 94022

Dear Russ:

This letter agreement amends agreements between Schonberg Research Corporation, a California Corporation, the name of which was previously Schonberg Radiation Corporation ("SRC" or "Company") and Accuray Incorporated, a California corporation, which was the general partner in and is the successor to Accuray Associates, a California limited partnership ("Accuray" or "Buyer" or "Licensee"). The agreements, which were amended by an amendment made and entered into on 15 April 1996 (the "Amendment"), are:

Manufacturing License and Technology Transfer Agreement dated January 28, 1991 between Schonberg Radiation Corporation and Accuray Associates (the "License") and

OEM Purchase Agreement between Schonberg Radiation Corporation and Accuray Associates dated January 28, 1991 (the "Purchase Agreement").

Initially capitalized terms herein are intended to have the meanings given them in the License, the Purchase Agreement, and the Amendment.

The License, the Purchase Agreement, and the Amendment are hereby amended as follows:

1. Paragraph 10 of the Purchase Agreement is deleted in its entirety and replaced by the statement, "This paragraph intentionally omitted" so as to avoid renumbering subsequent paragraphs.

2. Paragraph 5(a) of the License is amended and restated in its entirety to read as follows:

5. Royalties

(a) Amount of Payment. For each Licensed Product manufactured by Licensee, the Company, or by a third party on Licensee's behalf which is sold or otherwise distributed (a "Royalty Bearing Product") after 1 April 1996, Licensee shall pay to the Company

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\$25,000, except that beginning 1 October 2002 the payment for the first such Royalty Bearing Product each calendar quarter shall be \$18,750, until such time as the Maximum Royalty Amount (\$2,500,000) has been paid to the Company under this License; provided, however, that the Maximum Royalty Amount shall be reduced by the full amount of any research and development costs which are paid for by licensee under the terms of the Purchase Agreement in connection with the delivery of the Initial Units (as defined in the Purchase Agreement). Upon payment in full of the Maximum Royalty Amount as so reduced, the licenses granted under this License shall become fully-paid and royalty-free.

Sincerely,
Accuray Incorporated

/s/ John M. Harland
John M. Harland
Sr. Vice President & Chief Financial Officer

AGREED:

Schonberg Research Corporation



PATENT AND TRADEMARK LICENSE AGREEMENT

THIS PATENT AND TRADEMARK LICENSE AGREEMENT (this "Agreement") is made and entered into effective as of November 29, 2006 (the "Effective Date") by and between **Accuray Incorporated** (hereinafter referred to as "LICENSOR"), a California corporation, and **Forte Automation Systems, Inc.** (hereinafter referred to as "LICENSEE"), an Illinois corporation. LICENSOR and LICENSEE are hereafter occasionally referred to as a "Party" or "Parties," as indicated by the context.

RECITALS

- A. LICENSOR, in part through an assignment from Mr. Toby D. Henderson ("Henderson"), is the owner of U.S. Patent Application No. 11/129,122 (the "'122 Application"), entitled "Robotic Arm for Patient Positioning Assembly," filed May 13, 2005, which relates to a robotic patient positioning system.
- B. LICENSOR is the owner of Licensed Trademarks (as defined below) for use with Licensed Products (as defined below).
- C. LICENSEE desires to obtain certain license rights to the '122 Application and any and all patents that issue therefrom and to the Licensed Trademarks from LICENSOR in the Field of Use (as defined below) or in the event the Exclusive Manufacturing Agreement ("Manufacturing Agreement") effective November 29, 2006 between LICENSOR and LICENSEE is terminated, and LICENSOR desires to grant certain license rights to LICENSEE.

AGREEMENTS

Now, therefore, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements set forth herein, LICENSOR and LICENSEE mutually agree as follows:

1. Definitions. As used herein, the following terms shall have the meanings set forth below:

"Agreement" has the meaning given in the Preamble above.

"Confidential Information" means any and all information concerning the Licensed Patent and Licensed Products, including but not limited to techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, design details, and specifications.

"Effective Date" has the meaning given in the Preamble above.

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"Field of Use" means (1) Procure Treatment Centers, Inc. ("Procure"), or a substitute thereof in the medical device arena, wherein the Licensed Products are incorporated into traditional large scale proton therapy centers of an end customer, with multiple treatment rooms and with a cost greater than seventy-five million dollars (\$75,000,000) and the patient positioning systems are not for any other type of resale by Procure or the end customer of Procure, and (2) any other use to which the issued claims of the Licensed Patent would apply to a robotic manipulator that is not to be affixed to a patient positioning system by LICENSEE or any end user of such manipulator.

"Licensed Patent" means each and all of the following: (a) the '122 Application and foreign equivalents; (b) all patents maturing from a continuation, division, reissue, or reexamination of the '122 Application or foreign equivalents and (c) all patents maturing from a continuation-in-part or foreign equivalents of the '122 Application, so long as Henderson is named as an inventor on the patent that issues from the continuation-in-part or foreign equivalents.

"Licensed Products" means any product which is covered in whole or in part by one or more valid and unexpired claims of the Licensed Patent issued in the country of manufacture, sale, importation or use of the Licensed Product and/or the Licensed Trademarks.

"Licensed Territory" means the World.

"Licensed Trademarks" means the AccurayTM, the Accuray logo, and the RobocouchTM trademarks.

"LICENSEE" has the meaning given in the Preamble above.

"LICENSOR" has the meaning given in the Preamble above.

2. Grant of Licenses.

2.1 LICENSOR hereby grants to LICENSEE, subject to and consistent with the terms and conditions of Section 13 of the Manufacturing Agreement:

(a) for the Licensed Products shipped by LICENSEE hereunder and installed with equipment supplied by Ion Beam Applications (IBA), an exclusive only as to Procure, or a substitute thereof in the medical device arena, non-revocable, fully paid up, royalty free, license, and privilege under the Licensed Patent in the Licensed Territory to make, import, use, sell, have sold, distribute, have distributed, have made (including manufacture by others for LICENSEE's benefit), and offer for sale the Licensed Products for the Field of Use;

(b) for the first 20 Licensed Products shipped by LICENSEE hereunder and not installed with equipment supplied by IBA, an exclusive only as to Procure, or a substitute thereof

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in the medical device arena, non-revocable, fully paid up, royalty free, license, and privilege under the Licensed Patent in the Licensed Territory to make, import, use, sell, have sold, distribute, have distributed, have made (including manufacture by others for LICENSEE's benefit), and offer for sale the Licensed Products for the Field of Use;

(c) for 21 or more of the Licensed Products shipped by LICENSEE hereunder, and not installed with equipment supplied by IBA, an exclusive only as to Procure, or a substitute thereof in the medical device arena, non-revocable, royalty-based license and privilege under the Licensed Patent in the Licensed Territory, to make, import, use, sell, have sold, distribute, have distributed, have made (including manufacture by others for LICENSEE's benefit), and offer for sale the Licensed Products for the Field of Use. The royalty under this section to be 20% of LICENSEE's actual cost of goods of the Licensed Products provided hereunder, such cost of goods shall be disclosed by LICENSEE to LICENSOR within 30 days of the shipment of the 21st Licensed Product,

2.2 LICENSOR hereby grants to LICENSEE, subject to and consistent with the terms and conditions of Section 13 of the Manufacturing Agreement between LICENSOR and LICENSEE, a non-exclusive, fully paid up, royalty free, license, and privilege under the Licensed Trademarks in the Licensed Territory to use the Licensed Trademarks for the Licensed Products so long as LICENSEE has license under Section 2.1 above.

In order that the use of the Licensed Trademarks may be effective, the LICENSEE shall maintain in the Licensed Products' manufacture or services rendering, the same quality standard that LICENSEE uses in manufacturing the Licensed Products for the LICENSOR under the Manufacturing Agreement. The LICENSEE's use of the Licensed Trademarks shall be conducted in a commercially reasonable manner, which maintains the associated goodwill, and reputation, which has been attributed to LICENSOR by its consumers and the public. All related advertising, promotional, and other related uses of the Licensed Trademarks by the LICENSEE shall conform to the Guidelines.

2.3 All Licensed Products for patient positioning systems will be sold by LICENSEE bearing LICENSOR's label, which includes the Licensed Trademarks. LICENSOR shall provide the LICENSEE with written guidelines (the "Guidelines"), attached hereto as Exhibit A, regarding the appearance and use by the LICENSEE of the Licensed Trademarks, and the LICENSEE shall fully comply with any such Guidelines in all uses of the Licensed Trademarks.

2.4 During the term of this Agreement, LICENSEE acknowledges ownership of the Licensed Patent and Licensed Trademarks in LICENSOR and will do nothing inconsistent with such ownership or in denigration or tarnishment of same. LICENSEE recognizes

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LICENSOR's title in and to the Licensed Patent and Licensed Trademarks and the validity thereof, and LICENSEE will not, in any way, in any country, during the term of this Agreement:

- (a) dispute or impugn such title or the validity of the Licensed Patent and Licensed Trademarks;
- (b) dispute or impugn the right of LICENSOR to the Licensed Patent and Licensed Trademarks;
- (c) dispute or impugn the right of LICENSOR to use the Licensed Patent and Licensed Trademarks; or
- (d) do or suffer to be done any act or thing which may in any way impair the right of LICENSOR in and to the Licensed Patent and Licensed Trademarks or any registration thereof.

2.5 LICENSOR may, at a commercially reasonable time and with reasonable notice, carry out an inspection of LICENSEE's manufacturing facility or such other places of productions owned by LICENSEE so that compliance with the quality standards ("Quality Standards") set by LICENSOR and attached hereto as Exhibit B may be verified. Any such inspection shall be at the sole cost and expense of the LICENSOR. Any inspection shall be subject to a confidentiality agreement between LICENSOR and LICENSEE mutually agreeable to the Parties before any inspection may take place.

3. Records and Accounting. LICENSEE shall keep accurate records and books with respect to Licensed Products sold by LICENSEE, showing in sufficient detail all facts necessary for determination of compliance with Section 2, above. LICENSOR shall have the right, during the term of this Agreement, and for a period of one (1) year thereafter, but no more frequently than once each calendar year, to have such records and books examined at LICENSOR's expense by an independent public accountant appointed by LICENSOR. No information gained by such audit may or shall be disclosed to LICENSOR or any third party by any accountant at any time, other than that required to verify whether the LICENSEE has complied with the restrictions under Section 2 of this Agreement.

4. Infringement of Licensed Rights.

4.1 Notice of Infringement. If either Party becomes aware of any actual or threatened infringement of a Licensed Patent, such Party shall promptly notify the other Party in writing.

its own name and LICENSOR shall be the sole beneficiary of any award or settlement resulting from the prosecution of such an infringement action.

If LICENSEE believes it is being damaged by an infringer in pursuit of the Field of Use, LICENSOR agrees to consider in good faith whether or not to bring a suit under the Licensed Patent, but at LICENSOR's sole discretion. Notwithstanding the foregoing, if LICENSEE can demonstrate that such alleged infringing action is affecting LICENSEE's market share in the Field of Use by more than 10%, then LICENSOR will prosecute or LICENSOR will permit LICENSEE to prosecute the alleged infringing action, and if the latter at LICENSEE's own expense and for its own benefit. LICENSEE will keep LICENSOR informed of all actions related to the prosecution and will have no right to settle or diminish the Licensed Patent in any way, without written authorization of LICENSOR. If a court of competent jurisdiction deems LICENSOR to be a necessary and indispensable party, then LICENSEE may add LICENSOR as a plaintiff in any suit brought with respect to any such infringement in the Licensed Territory. The preceding notwithstanding, the LICENSOR agrees to allow LICENSEE to assert its exclusive rights against such third party infringer through correspondence demanding that such third party infringer cease and desist from such infringing activity in the Field of Use. LICENSEE shall provide to LICENSOR copies of all such correspondence.

5. Patents.

5.1 Prosecution of Licensed Patent. LICENSOR shall at its own cost diligently prosecute to grant all subsisting patent applications within the Licensed Patent so as to attempt to secure the broadest patent coverage reasonably obtainable consistent with the limitations of the prior art and shall maintain all U.S. patents within the Licensed Patent in force for the full term thereof.

5.2 Patent Marking. LICENSEE shall mark all Licensed Products sold by it under this Agreement and marketing material associated therewith with the number of the Licensed Patent in conformity with the provisions of the statutes relating to the marking of patented devices in any nation(s) within the Licensed Territory where the Licensed Patent is subsisting and in which the particular Licensed Products are expected to be sold. If a number for the Licensed Patent is not available, LICENSEE shall mark all Licensed Products and marketing material with "Patent Pending."

6. Representations, Warranties, and Indemnification.

6.1 Incorporation. Each Party represents and warrants to the other that it is a corporation, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to enter into this Agreement and perform its agreements and covenants to be performed hereunder.

6.2 Authority. Each Party represents and warrants to the other that the execution and delivery of this Agreement by it and the performance by it of its covenants and agreements hereunder have been duly authorized by all necessary corporate action and, when executed and delivered by it, this Agreement shall constitute the valid and legally binding agreement of it, enforceable against it in accordance with its terms (except to the extent enforceability may be limited by bankruptcy, insolvency or other equitable principles).

6.3 Ownership of the Licensed Patent and Right to Convey. LICENSOR represents and warrants that (a) to its knowledge, it is the owner of such right, title, and interest in the Licensed Patent as necessary for it to have the right and authority to grant the licenses granted in Section 2 above; and (b) it has not executed any agreement or taken any other action in conflict herewith or which may adversely affect LICENSEE's rights under this Agreement.

6.4 Indemnification. LICENSEE agrees to indemnify, defend, and hold LICENSOR, its affiliates, and their respective officers, directors, employees and agents (collectively the "Indemnitees") harmless from and against any claim of any kind and will pay any costs, damages and reasonable attorneys' fees incurred or attributable to such claim arising out of or related to the exercise of any rights granted LICENSEE under this Agreement or the breach of this License by LICENSEE (except, in either case, to the extent attributable to LICENSOR's breach of this Agreement).

6.5 Nothing in this Agreement shall be construed as LICENSOR providing:

(a) a warranty or representation as to the validity or scope of any Licensed Patent;

(b) a warranty or representation that anything made, used, sold, or otherwise disposed of under the Licensed Patent in this Agreement is or will be free from infringement of patents of third parties;

(c) an obligation to bring or prosecute actions or suits against third parties for infringement of any patent; or

(d) a grant by implication, estoppel, or otherwise any licenses or rights under patents other than Licensed Patent and Licensed Trademarks.

6.6 Products Liability. LICENSEE ASSUMES ALL RESPONSIBILITY FOR THE MANUFACTURE AND SALE OF THE LICENSED PRODUCTS. LICENSEE shall indemnify and hold LICENSOR harmless from and against any loss that LICENSOR may incur, suffer or be required to pay pursuant to any claim or any allegation that the Licensed Products have caused death, bodily injury or property damage or loss. For greater certainty, the foregoing indemnity will not apply if LICENSOR are found to be grossly negligent or intentionally negligent.

6.7 Negation. LICENSOR PROVIDES ALL RIGHTS GRANTED LICENSEE UNDER THIS AGREEMENT AS IS, AS AVAILABLE, AND WITH ALL FAULTS. Among other things, LICENSOR disclaims any and all warranties, whether express or implied, including but not limited to any implied warranty of merchantability, of fitness for a particular purpose, of title, of non-infringement or arising out of any course dealing.

6.8 No Direct Liability. LICENSEE acknowledges and agrees that LICENSOR shall have no liability for any special, consequential, lost profits, expectation, punitive or other indirect damages in connection with any claim arising out of or related to LICENSEE's sale or supply of the Licensed Products in the Licensed Territory in the Field of Use, including but not limited to damages for loss of business profits and/or business interruption, whether foreseeable or not, and whether grounded in tort (including negligence), strict liability, contract, or otherwise, even if LICENSOR has been advised of the possibility of such damages.

6.9 No Other License or Obligation. This Agreement is a license only. There are no other obligations upon LICENSOR. LICENSEE undertakes any and all obligations related to selling and manufacturing the Licensed Products based on this Agreement.

7. Assignment. Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, except that a Party may assign this Agreement, without the other Party's consent, to a successor or acquirer that is not a competitor of the other Party, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of a Party's assets or the sale of that portion of a Party's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties' permitted successors and assigns. The ownership of the Licensed Patent may be freely transferred by LICENSOR without LICENSEE's consent; provided, however, that any such transfer by LICENSOR shall be expressly subject to LICENSEE's rights granted in this Agreement, and that the transferee thereof shall be expressly bound by the terms hereof.

8. Term and Termination.

8.1 Effective Date and Term. The term of this Agreement shall commence on the Effective Date and shall continue until LICENSEE has completed all of its contractual obligations for the Licensed Product to the Field of Use, but not to exceed the period when:

(1) the last of the Licensed Patent has either lapsed or expired;

(2) all of the claims of the Licensed Patent have been determined to be invalid or unenforceable by a court of competent jurisdiction from whose decision no appeal is or can be taken, whichever event shall occur first; or

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(3) no patent matures from the '122 Application, in which event all information of confidential nature, including but not limited to specifications and drawings relating to the Licensed Product, will be governed by Section 9 below (Confidentiality).

8.2 Termination for Material Breach. This Agreement, with respect to the Licensed Trademarks, may be terminated by either Party at any time if any Party breaches any material term of this Agreement; provided that the terminating Party shall have given the other Party written notice of such breach (which shall identify which provision is not complied with and shall give reasonable justification therefor) and the other Party shall have failed or otherwise been unable to cure same within thirty (30) days after receipt of such notice.

8.3 Other Grounds for Termination. In addition to Section 8.2 above, LICENSOR may terminate this Agreement, with respect to the Licensed Trademarks, for the following offenses, provided that LICENSEE be given written notice of such offenses and LICENSEE has failed or otherwise been unable to cure same within thirty (30) days after receipt of such notice:

(a) With respect to the use of the Licensed Trademarks, LICENSEE, its employees or agents, become the subject of any claim of violation of any law that may potentially affect, in LICENSOR's reasonable discretion and opinion, the "good will" associated with the Licensed Trademarks, or which otherwise calls into question LICENSOR's reputation or that of LICENSOR's goods and services or the Licensed Products, including without limitation: if LICENSEE engages in unauthorized uses of the Licensed Products;

(b) With respect to use of the Licensed Trademarks, LICENSEE does not maintain in the Licensed Products' sale or manufacture a quality standard equivalent to ISO 9001-2000;

It is expressly agreed that LICENSOR's reputation and goodwill is of utmost importance to LICENSOR and termination with respect to the Licensed Trademarks on these grounds is necessary to the protection thereof.

8.4 Orders and Sales of Existing Licensed Products Following Termination. LICENSEE shall have the right for a period of one hundred eighty (180) days following any termination, to fill existing orders for Licensed Products placed prior to the effective date of termination and to sell any inventory of Licensed Products existing (either in a finished state or as work-in-process) at the time of termination or notice of termination, whichever occurs first.

8.5 Bankruptcy, Receivership. Notwithstanding the cure periods set forth in Sections 8.2 and 8.3 above, LICENSOR may terminate this Agreement immediately if LICENSEE ceases or suspends doing business or becomes subject to any proceeding under applicable liquidation, insolvency, bankruptcy, reorganization or similar laws or LICENSEE makes a conveyance or assignment for the benefit of its creditors.

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8.6 Obligations Incurred Prior to Breach. Any termination pursuant hereto shall not relieve either Party of any obligation or liability accrued hereunder prior to such termination nor rescind or give rise to any right to rescind anything done or any payments made or other consideration given

hereunder prior to the time of such termination and shall not affect in any manner the rights of either Party arising out of this Agreement prior to such termination.

8.7 Survival Upon Termination. Sections 3, 4, 5.2, 6, 8.4, and 8.6 above, this Section 8.7, and Section 9 below shall survive any termination of this Agreement.

9. Confidentiality.

9.1 Confidential Information. All information disclosed by either Party to the other Party related to the Licensed Products deemed to be Confidential Information shall be governed by the Mutual Confidentiality Agreement signed by the Parties and effective November 28, 2006.

9.2 Permitted Disclosures of Confidential Information. Notwithstanding the foregoing provisions, the Parties pursuant to this Agreement shall be entitled to disclose Confidential Information of the other Party to the Field of Use insofar as such disclosure is reasonably necessary to promote the sale or use of products utilizing the Licensed Patents, provided that Disclosing Party has a confidentiality agreement with Procure, such agreement having substantially equivalent confidentiality obligations as provided herein.

Notice. Each Party shall immediately give notice to the other Party of any unauthorized disclosure, misuse, theft, or other loss of confidential information of that other Party, whether inadvertent or otherwise, and take all reasonable and appropriate steps that the other Party may request to minimize any resulting adverse effects.

9.3 Survival of Obligation of Confidentiality. The obligations set forth in this Section 9 shall survive the modification, renewal, or termination of this Agreement.

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10. Notices. All notices required or permitted under this Agreement shall be in writing and if delivered in person, effective immediately, if delivered by reputable national or international overnight delivery service, effective 2 business days after deposit with carrier, or if delivered by registered or certified mail, postage prepaid with return receipt requested, effective 5 business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either Party in accordance with this section.

If to LICENSOR:

Accuray Incorporated
Attention: Chief Operating Officer
1310 Chesapeake Terrace
Sunnyvale, CA 94089

Copy to: General Counsel

If to LICENSEE:

Forte Automation Systems, Inc.
8155 Burden Road
Machesney Park, IL 61115
Attn: Toby D. Henderson

Each notice, request or instruction shall bear the date on which it is delivered if delivered personally, or the date on which it is deposited with an express courier service.

11. General Provisions.

11.1 Merger and Integration. This Agreement and the Manufacturing Agreement represent the entire understanding of the parties with respect to its subject matter and supersedes all prior agreements, written or oral, concerning the subject matter hereof, and may not be changed or modified in any regard except by an instrument in writing and signed by duly authorized representatives of the parties hereto. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, COO or General Counsel.

11.2 Severability. It is expressly agreed that if any term or provision of this Agreement is found to be invalid or unenforceable in any jurisdiction, then such provision in such jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

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11.3 No Waiver. Failure of a Party at any time to require performance of any provision of this Agreement shall not affect the right of that Party to require full performance thereafter; a waiver by a Party of a breach of any provision of this Agreement shall not constitute a modification of this Agreement or prevent that Party from again enforcing such term or condition in the future with respect to subsequent events.

11.4 Relationship of the Parties. The relationship established between the parties by this Agreement shall be solely that of LICENSOR and LICENSEE. No principal-agent, joint venture, employment, or other relationship exists between LICENSOR and LICENSEE. Neither Party hereto shall have any right or shall attempt to enter into contracts or commitments on behalf of the other Party or to bind the other Party in any respect whatsoever.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the patent and trademark laws of the United States of America. Both Parties submit to the jurisdiction and venue in the United States District Court for the Northern District of Illinois in Chicago, Illinois, and any litigation brought to enforce the provisions of this Agreement shall be brought therein.

11.6 Cumulative Nature of Rights and Remedies. The rights and remedies herein reserved to the Parties shall be cumulative and additional to any other or further rights and remedies available at law or equity.

[SIGNATURE PAGE FOLLOWS]

Remainder of page intentionally left blank.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the date first written above. By signing below the individuals represent that they possess the authority to sign on behalf of and bind the Party for which they are signing.

ACCURAY INCORPORATED

FORTE AUTOMATION SYSTEMS, INC.

BY /s/ Chris A. Raanes
Print Name Chris A. Raanes
Title SVP & COO
Date 11/29/06

BY /s/ Toby Henderson
Print Name Toby Henderson
Title President
Date 11/29/06

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Exhibit A

Accuray Labeling Guidelines

1. The Licensed Products will include a label or marking with the Licensed Trademarks as shown below:



2. All use of the Licensed Trademarks in relation to the Licensed Products shall be clearly denoted as Accuray's Trademarks.
3. All literature, business collateral, and other material bearing the Licensed Trademarks will include an attribute relating to Accuray's ownership thereof, namely a footnote or other designation (e.g., "RoboCouch™ is a trademark of Accuray Incorporated and is used with permission").

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Exhibit B

Accuray Quality Standards

1. Compliant with certification standards according to ISO 9001:2000.

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