Table of Contents

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

FORM 10-Q

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

For the quarterly period ended September 30, 2011

or

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

For the transition period from to

Commission File Number: 001-33301

ACCURAY INCORPORATED
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**20-8370041**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification Number)

1310 Chesapeake Terrace
Sunnyvale, California 94089
(Address of Principal Executive Offices Including Zip Code)

(408) 716-4600
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

As of October 14, 2011, there were 70,513,501 shares of the Registrant's Common Stock, par value $0.001 per share, outstanding.

Table of Contents

Accuray Incorporated

Form 10-Q for the Quarter Ended September 30, 2011

Table of Contents

Table of Contents

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

Accuray Incorporated
Condensed Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	September 30, 2011 (unaudited)	June 30, 2011 (1)
Assets		
Current assets:		
Cash and cash equivalents	$ 140,150	$ 95,906
Restricted cash	3,284	3,172
Accounts receivable, net of allowance for doubtful accounts of $1,066 and $324 at September 30, 2011 and June 30, 2011, respectively	77,913	61,853
Inventories	83,318	97,836
Prepaid expenses and other current assets	17,868	21,115
Deferred cost of revenue—current	8,690	5,840
Total current assets	331,223	285,722
Property and equipment, net	41,963	44,823
Goodwill	55,858	54,474
Intangible assets, net	61,952	66,039
Deferred cost of revenue—noncurrent	3,129	2,258
Other assets	5,910	2,468
Total assets	$ 500,035	$ 455,784
Liabilities and equity		
Current liabilities:		
Accounts payable	$ 24,763	$ 38,645
Accrued compensation	20,125	27,406
Other accrued liabilities	28,820	43,012
Customer advances	23,971	25,829
Deferred revenue—current	74,441	68,152
Total current liabilities	172,120	203,044
Long-term liabilities:		
Long-term other liabilities	5,897	6,321
Deferred revenue—noncurrent	6,438	6,092
Long-term debt	76,559	—
Total liabilities	261,014	215,457
Commitments and contingencies (Note 7)		

Equity:		
Preferred stock, $0.001 par value; authorized: 5,000,000 shares; no shares issued and outstanding	—	—
Common stock, $0.001 par value; authorized: 100,000,000 shares; issued: 72,530,843 and 72,199,837 shares at September 30, 2011 and June 30, 2011, respectively; outstanding 70,390,825 and 70,059,819 shares at September 30, 2011 and June 30, 2011, respectively	70	70
Additional paid-in capital	399,905	373,963
Accumulated other comprehensive income	962	127
Accumulated deficit	(170,895)	(144,385)
Total stockholders' equity	230,042	229,775
Noncontrolling interest	8,979	10,552
Total equity	239,021	240,327
Total liabilities and equity	$ 500,035	$ 455,784

(1) Condensed consolidated balance sheet at June 30, 2011 has been derived from audited consolidated financial statements.

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

Table of Contents

Accuray Incorporated
Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended September 30, 2011	2010
Net revenue:		
Products	$ 56,174	$ 19,916
Services	43,401	17,734
Other	876	418
Total net revenue	100,451	38,068
Cost of revenue:		
Cost of products	38,373	7,497
Cost of services	37,349	11,800
Cost of other	301	534
Total cost of revenue	76,023	19,831
Gross profit	24,428	18,237
Operating expenses:		
Selling and marketing	13,581	7,760
Research and development	20,565	8,047
General and administrative	14,969	8,559
Total operating expenses	49,115	24,366
Loss from operations	(24,687)	(6,129)
Other income (expense), net	(2,858)	1,616
Loss before provision for income taxes	(27,545)	(4,513)
Provision for income taxes	538	127
Net loss	(28,083)	(4,640)
Noncontrolling interest	(1,573)	—
Net loss attributable to stockholders	$ (26,510)	$ (4,640)
Net loss per share:		
Basic and diluted net loss per share	$ (0.38)	$ (0.08)
Weighted average common shares used in computing basic and diluted net loss per share	70,263	58,667

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

Table of Contents

Accuray Incorporated
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Three Months Ended September 30, 2011	2010
Cash Flows From Operating Activities		
Net loss	$ (28,083)	$ (4,640)

Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	8,319	1,389
Share-based compensation	2,609	2,496
Accretion of interest on long-term debt	639	—
Provision for (recovery of) bad debts	(454)	151
Provision for write-down of inventories	1,578	421
Loss on disposal of property and equipment	—	9
Changes in assets and liabilities:		
Restricted cash	(112)	—
Accounts receivable	(16,656)	1,576
Inventories	11,545	(3,030)
Prepaid expenses and other current assets	3,138	(1,089)
Deferred cost of revenue	(3,726)	(458)
Other assets	(557)	(133)
Accounts payable	(14,013)	(1,359)
Accrued liabilities	(22,159)	(3,632)
Customer advances	(1,647)	2,453
Deferred revenue	7,762	(4,401)
Net cash used in operating activities	(51,817)	(10,247)
Cash Flows From Investing Activities		
Purchases of property and equipment	(995)	(1,332)
Acquisition of business	(1,384)	—
Purchase of investments	—	(46,903)
Sale and maturity of investments	—	54,336
Net cash (used in) provided by investing activities	(2,379)	6,101
Cash Flows From Financing Activities		
Proceeds from issuance of common stock	911	803
Proceeds from debt, net of costs	96,100	—
Net cash provided by financing activities	97,011	803
Effect of exchange rate changes on cash	1,429	451
Net increase (decrease) in cash and cash equivalents	44,244	(2,892)
Cash and cash equivalents at beginning of period	95,906	45,434
Cash and cash equivalents at end of period	$ 140,150	$ 42,542

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

Table of Contents

Accuray Incorporated
Notes to Condensed Consolidated Financial Statements
(unaudited)

1. Description of Business

Organization

Accuray Incorporated (together with its subsidiaries, the "Company") is incorporated in Delaware. The Company designs, develops and sells advanced medical radiation systems for the treatment of tumors throughout the body. The CyberKnife Systems are advanced, image-guided robotic systems used to deliver radiosurgery for the treatment of solid tumors anywhere in the body.

On June 10, 2011, the Company completed the acquisition of TomoTherapy Incorporated ("TomoTherapy") by acquiring all of TomoTherapy's common stock in exchange for cash and shares of Accuray common stock. TomoTherapy designs, manufactures and sells systems used to deliver advanced radiation therapy for the treatment of a wide range of cancer types. The condensed consolidated financial statements include the financial results of TomoTherapy prospectively from the date of acquisition.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and a variable interest entity, Compact Particle Acceleration Corporation ("CPAC") (for further information, see "Note 11. Investment in CPAC"). All significant inter-company transactions and balances have been eliminated in consolidation.

The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles, ("GAAP"), pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Certain information and note disclosures have been condensed or omitted pursuant to such rules and regulations. The unaudited condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair presentation of the periods presented. The results for the three months ended September 30, 2011 are not necessarily indicative of the results to be expected for the year ending June 30, 2012, for any other interim period or for any future year.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures at the date of the financial statements. Key estimates and assumptions made by the Company relate to share-based compensation, valuation allowances for deferred tax assets, estimate of allowance for doubtful accounts, valuation of excess and obsolete inventories, impairment of long-lived assets and goodwill, the fair value of purchase consideration paid and assets acquired and liabilities assumed in business combinations, deferred revenue and deferred cost of revenue. Actual results could differ materially from those estimates.

Foreign Currency

The Company's international subsidiaries use their local currencies as their functional currencies. For those subsidiaries, assets and liabilities are translated at exchange rates in effect at the balance sheet date and income and expense accounts at the average exchange rate. Resulting translation adjustments are excluded from the determination of net income and are recorded in accumulated other comprehensive income as a separate component of stockholders' equity. Net foreign currency exchange transaction gains or losses are included as a component of other income (expense), net, in the Company's condensed consolidated statements of operations.

Cash and Cash Equivalents

Cash equivalents consist of amounts invested in highly liquid investment accounts with original maturities of three months or less on the date of purchase and money market accounts.

Table of Contents

Restricted Cash

Restricted cash primarily relates to funds held related to VAT guarantees in a foreign jurisdiction and certain performance obligation guarantees.

Fair Value of Financial Instruments

The carrying values of the Company's financial instruments including cash equivalents, restricted cash, accounts receivable and accounts payable are approximately equal to their respective fair values due to the relatively short-term nature of these instruments. The fair value of the Convertible Senior Notes was $80.3 million at September 30, 2011, which was based on the quoted market price on September 29, 2011 (the last trading day during the three months ended September 30, 2011).

Concentration of Credit Risk

The Company's cash and cash equivalents are mainly deposited with several major financial institutions. At times, deposits in these institutions exceed the amount of insurance provided on such deposits. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant risk on these balances.

For the three months ended September 30, 2011, there was no customer that represented 10% or more of total net revenue. For the three months ended September 30, 2010, there was one customer that represented 10% or more of total net revenue. At September 30, 2011 and 2010, there were no customers and two customers, respectively, whose accounts receivable balance was 10% or more of the Company's total accounts receivable.

Accounts receivable are typically not collateralized. The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses. Accounts receivable are deemed past due in accordance with the contractual terms of the agreement. Accounts are charged against the allowance for doubtful accounts once collection efforts are unsuccessful. Historically, such losses have been within management's expectations.

Single source suppliers presently provide the Company with several components. In most cases, if a supplier were unable to deliver these components, the Company believes that it would be able to find other sources for these components subject to any regulatory qualifications, if required.

Inventories

Inventories are stated at the lower of cost (on a first-in, first-out basis) or market value. Excess and obsolete inventories are written down based on historical sales and forecasted demand, as judged by management. The Company determines inventory and product costs, which include allocated production overheads, through use of standard costs.

Revenue Recognition

The Company earns revenue from the sale of products, the operation of its shared ownership program, and the provision of related services, which include installation services, post-contract customer support ("PCS"), training and other professional services. The Company records its revenues net of any value added or sales tax. From time to time, the Company introduces customers to third party financing organizations. No amounts received from these third party financing organizations are at risk.

In the first quarter of fiscal 2011, the Company adopted Accounting Standards Update ("ASU") 2009-13, *Multiple-Deliverable Revenue Arrangements*, and ASU 2009-14, *Certain Arrangements That Include Software Elements*. These standards change the requirements for establishing separate units of accounting in a multiple element arrangement and require the allocation of arrangement consideration to each deliverable to be based on the relative selling price. The Financial Accounting Standards Board ("FASB") also amended the accounting standards for revenue recognition to exclude software that is contained in a tangible product from the scope of software revenue guidance if the software is essential to the tangible product's functionality. The Company adopted these new standards on a prospective basis. For revenue arrangements that were entered into or materially modified after the adoption of these standards, implementation of this new authoritative guidance had an insignificant impact on the Company's reported net revenue since the first quarter of fiscal 2011 as compared to net revenue if the related arrangements entered into or modified after the effective date were subject to the accounting requirements in effect in the prior year.

The Company frequently enters into sales arrangements with customers that contain multiple elements or deliverables. For revenue arrangements with multiple elements which were entered into prior to the adoption of ASU 2009-13 and 2009-14 and

Table of Contents

which have not subsequently been materially modified, the Company allocates arrangement consideration to each element based upon vendor specific objective evidence ("VSOE") of fair value of the respective elements. VSOE of fair value for each element is based upon the Company's standard rates charged for the product or service when such product or service is sold separately or based upon the price established by the Company's pricing committee when that product or service is not yet being sold separately. When contracts contain multiple elements, and VSOE of fair value exists for all undelivered elements, the Company accounts for the delivered elements, principally the system and optional product upgrades, based upon the residual method. If VSOE of fair value does not exist for all the undelivered elements, all revenue is deferred until the earlier of: (1) delivery of all elements, and (2) establishment of VSOE of fair value for all remaining undelivered elements.

Under the new accounting guidance, in evaluating revenue recognition for arrangements which contain multiple deliverables, the Company determined that in certain instances it was not able to establish VSOE for all deliverables in an arrangement as the Company infrequently sells each element on a stand-alone basis, does not price products within a narrow range, or has a limited sales history. When VSOE cannot be established, the Company attempts to establish the selling price of each element based on relevant third-party evidence ("TPE"). TPE is determined based on competitors' prices for similar deliverables when sold separately. Generally, the Company's offerings contain a significant level of proprietary technology, customization or differentiation such that the comparable pricing of products with similar functionality cannot be obtained. Furthermore, the Company is unable to reliably determine what similar competitors' products' selling prices are on a stand-alone basis. Therefore, the Company typically is not able to determine TPE.

When the Company is unable to establish selling price using VSOE or TPE, the Company uses its best estimate of selling price ("BESP") in the Company's allocation of arrangement consideration. The objective of BESP is to determine the price at which the Company would transact a sale if the product or service were sold on a stand-alone basis. BESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings. The Company determines BESP for a product or service by considering multiple factors including, but not limited to, pricing practices, internal costs, geographies and gross margin. The determination of BESP is made through consultation with and formal approval by the Company's pricing committee, taking into consideration the overall go-to-market pricing strategy.

As the Company's go-to-market strategies and other factors evolve, the Company may modify its pricing practices in the future, which could result in changes in selling prices, including VSOE, TPE and BESP. As a result, the Company's future revenue recognition for multiple element arrangements could differ materially from that recorded in the current period. The Company regularly reviews VSOE, TPE and BESP and maintains internal controls over the establishment and update of these inputs.

The Company has a limited number of software offerings which are not required to deliver the tangible product's essential functionality and can be sold separately. Revenues from sales of these software products and related post-contract support are accounted for under software revenue recognition rules. The Company's multiple-element arrangements may therefore have a software deliverable that is subject to the existing software revenue recognition guidance. The revenue for these multiple-element arrangements is allocated to the software deliverable or group of software deliverables and the non-software deliverables based on the relative selling prices of all of the deliverables in the arrangement using the hierarchy in the new revenue recognition accounting guidance.

The Company recognizes product revenues when there is persuasive evidence of an arrangement, the fee is fixed or determinable, collection of the fee is probable and delivery has occurred. Payments received in advance of product shipment are recorded as customer advances and are recognized as revenue or deferred revenue upon product shipment or installation.

The Company assesses the probability of collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company generally does not request collateral from its customers. If the Company determines that collection is not probable, the Company will defer the fee and recognize revenue upon receipt of cash.

The Company records revenues from sales of systems to distributors on either a sell-through or sell-in basis, depending on the terms of the distribution agreement as well as terms and conditions executed for each sale, and once all revenue recognition criteria have been met. For sales of product upgrades and accessories to distributors, revenue is recognized on either a sell-through or sell-in basis, depending upon the terms of the purchase order or signed quotation and once all revenue recognition criteria have been met.

The Company's agreements with customers and distributors for system sales generally do not contain product return rights. Certain distributor agreements include parts inventory buy-back provisions upon distributorship termination. The Company accrues an inventory buy-back liability when and if such distributorship termination is expected.

Table of Contents

Product Revenue

The majority of our product revenue is generated from sales of the systems. The Company sells its systems with PCS contracts that provide for upgrades when and if they become available, training points and at times, professional services. The amount of arrangement fee allocated to products is determined by application of the relative selling price method for all elements in the arrangement for arrangements entered into or materially modified on or after July 1, 2010, or by using the residual method for arrangements entered into on or before June 30, 2010. If the Company is responsible for installation, the Company recognizes revenue only after installation and acceptance of the system. Otherwise, revenue is recognized upon delivery.

Service Revenue

Our service revenue is generated primarily from warranty services, post warranty services, installation services, unspecified when and if available product upgrades, training, and professional services. Warranty and post warranty service revenue is deferred and recognized ratably over the service period, generally 12-18 months, until no further obligation exists. Warranty service period starts upon product acceptance. Training and consulting service revenues that are not deemed essential to the functionality of the Systems are recognized as such services are performed. Installation service revenue is recognized concurrent with system revenue.

Costs associated with providing services are expensed when incurred, except when those costs are related to system upgrades where revenue recognition has been deferred. In those cases, the costs are deferred and are recognized over the period of revenue recognition.

Other revenue

Other revenue primarily consists of research and development and construction contract revenues.

Shared ownership program

The Company also enters into arrangements under its shared ownership program with certain customers. Agreements under the shared ownership program typically have a term of five years, during which the customer has the option to purchase the system, either at the end of the contractual period or in advance, at the customer's request, at pre-determined prices. Under the terms of such program, the Company retains title to its system, while the customer has use of the product. The Company generally receives a minimum monthly payment and earns additional revenues from the customer based upon its use of the product. The Company may provide unspecified upgrades to the product during the term of each program when and if available. Upfront non-refundable payments and minimum monthly payments from the customer are recognized as revenue over the contractual period. Additional revenues beyond the minimum payments from the shared ownership program are recorded as they become earned and receivable and are included within shared ownership program revenues, which are included in products revenue in the condensed consolidated statements of operations.

Future minimum revenues under shared ownership arrangements as of September 30, 2011 are as follows (in thousands):

Year Ending June 30,	Amount
2012 (remaining 9 months)	$ 206
2013	413
2014	594
2015	594
2016	594
Thereafter	594
Total	$ 2,995

Under the terms of the shared ownership program, the customer has the option to purchase a CyberKnife or TomoTherapy System at pre-determined prices based on the period the system has been in use and considering the lease payments already received. Revenue from such sales is recorded in accordance with the Company's revenue recognition policy, taking into account the PCS and any other elements that might be sold as part of the arrangement. At September 30, 2011, the Company had three systems installed under its shared ownership program. There were no sales of CyberKnife or TomoTherapy Systems that were formerly under the shared ownership program during the three months ended September 30, 2011.

Table of Contents

The CyberKnife and TomoTherapy Systems associated with the Company's shared ownership program are recorded within property and equipment. Depreciation and warranty expenses attributable to the CyberKnife shared ownership systems are recorded within cost of products.

Long-term construction and manufacturing contracts

The Company recognizes revenue and cost of revenue related to long-term construction and manufacturing contracts using contract accounting on the percentage-of-completion or the completed contract method. The Company recognizes such revenue under other revenue and cost of such revenue under cost of other. Any loss provision identified from the total contract in the period is recorded as an increase to cost of revenue.

Deferred Revenue and Deferred Cost of Revenue

Deferred revenue consists of deferred product revenue, deferred shared ownership program revenue, deferred service revenue and deferred other revenue. Deferred product revenue arises from timing differences between the shipment of product and satisfaction of all revenue recognition criteria consistent with the Company's revenue recognition policy. Deferred shared ownership program revenue results from the receipt of advance payments that will be recognized ratably over the term of the shared ownership program. Deferred service revenue results from the advance payment for services to be delivered over a period of time, usually one year. Service revenue is recognized ratably over the service period. Deferred cost of revenue consists of the direct costs associated with the manufacturing of units and direct service costs for which the revenue has been deferred in accordance with the Company's revenue recognition policies. Deferred revenue, and associated deferred cost of revenue, expected to be realized within one year are classified as current liabilities and current assets, respectively.

Goodwill and Purchased Intangible Assets

Goodwill represents the excess of acquisition cost over the fair value of tangible and identified intangible net assets of businesses acquired. Goodwill is not amortized, but is evaluated for impairment on an annual basis or when impairment indicators are present. In the first step of the analysis, the Company's assets and liabilities, including existing goodwill and other intangible assets, are assigned to the identified reporting units to determine the carrying value of the reporting units. If the carrying value of the reporting unit is in excess of its fair value, an impairment may exist, and the Company must perform the second step of the analysis, in which the implied fair value of the goodwill is compared to its carrying value to determine the impairment charge, if any.

The fair value of the reporting unit is determined using the market approach. Under the market approach, the Company estimates the fair value of each reporting unit based on the Company's closing stock price on the trading day closest to the annual review date multiplied by the outstanding shares on

that date. If the estimated fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and no further analysis is required. Through September 30, 2011, there have been no such impairment losses. Purchased intangible assets other than goodwill, including developed technology, in-process research and development and backlog, are amortized on a straight-line basis over their estimated useful lives unless their lives are determined to be indefinite. Purchased intangible assets are carried at cost, less accumulated amortization. Amortization is computed over the estimated useful lives of the respective assets which range from approximately one to six years.

Business Combinations

In fiscal 2011, the Company applied ASC 805, *Business Combinations*, and accounted for the acquisition of TomoTherapy using the acquisition method of accounting. The underlying principles are similar to the previous accounting guidance and require that the Company recognize separately from goodwill the assets acquired and the liabilities assumed, generally at their acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred and the net of the acquisition date fair values of the assets acquired and the liabilities assumed. While the Company uses its best estimates and assumptions as a part of the purchase price allocation process to accurately value assets acquired and liabilities assumed at the acquisition date, its estimates are inherently uncertain and subject to refinement. As a result, during the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments, if any, are recorded to the Company's condensed consolidated statements of operations. Transaction costs and costs to restructure the acquired company are expensed as incurred. The operating results of the acquired company are reflected in the Company's condensed consolidated financial statements after the date of the merger or acquisition.

Table of Contents

Share-Based Compensation

The Company accounts for share-based compensation by measuring and recognizing the fair value of all share-based payment awards made to employees based on the estimated grant date fair values, including employee stock options, restricted stock units ("RSUs"), restricted stock awards ("RSAs"), performance stock units ("PSUs") and the employee stock based purchase plan ("ESPP"). The determination of fair value involves a number of significant estimates. The Company uses the Black-Scholes option pricing model to estimate the value of employee share-based awards which requires a number of assumptions to determine the model inputs. These include the expected volatility of the Company's stock, the expected term of the share-based award, the expected risk free rate of interest and dividend yields. As share-based compensation expense is based on awards ultimately expected to vest, the expense is recorded net of estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. As the Company has been operating as a public company for a period of time that is shorter than its estimated expected option term, the Company concluded that its historical price volatility does not provide a reasonable basis for input assumptions within its Black-Scholes valuation model when determining the fair value of its stock options. Expected volatility was based on the historical volatility of a peer group of publicly traded companies. The Company continues to use the "simplified" method for the estimated term of the awards. Management's estimate of forfeitures is based on historical experience, but actual forfeitures could differ materially as a result of voluntary employee actions which could result in a significant change in future share-based compensation expense. See "Note 9, Share-Based Compensation" for additional information.

Income and Other Taxes

The Company is required to estimate its income taxes in each of the tax jurisdictions in which it operates prior to the completion and filing of tax returns for such periods. This process involves estimating actual current tax expense together with assessing temporary differences in the treatment of items for tax purposes versus financial accounting purposes that may create net deferred tax assets and liabilities. The Company accounts for income taxes under the asset and liability method, which requires, among other things, that deferred income taxes be provided for temporary differences between the tax bases of the Company's assets and liabilities and their financial statement reported amounts. In addition, deferred tax assets are recorded for the future benefit of utilizing net operating losses, research and development credit carryforwards and temporary differences.

The Company records a valuation allowance to reduce its deferred tax assets to the amount the Company believes is more likely than not to be realized. Because of the uncertainty of the realization of the deferred tax assets, the Company has recorded a full valuation allowance against its domestic and certain foreign net deferred tax assets.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. As of September 30, 2011, the amount of gross unrecognized tax benefits was $14.8 million, all of which would affect the Company's effective tax rate if realized. The Company recognizes interest income and interest expense and penalties on tax overpayments and underpayments within income tax expense. As of September 30, 2011, the Company had accrued a net $0.4 million payable for interest and penalties. The Company anticipates that except for $0.2 million in uncertain tax positions that may be reduced related to the lapse of various statutes of limitation, there will be no material changes in uncertain tax positions in the next 12 months.

Net Loss Per Common Share

Basic net loss per share is computed by dividing net loss by the weighted- average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing net loss by the weighted average number of common shares outstanding and other dilutive common shares outstanding during the period. The potential dilutive shares of the Company's common stock resulting from the assumed exercise of outstanding stock options, the vesting of RSUs, RSAs and PSUs, and the purchase of ESPP shares are determined under the treasury stock method.

For the three months ended September 30, 2011, outstanding options of 8,190,882, RSUs of 1,061,459, RSAs of 40,163 and PSUs of 529,851 were excluded from the calculation of diluted net loss per share as their inclusion would be anti-dilutive. For the three months ended September 30, 2010, outstanding options of 6,070,721 and RSUs of 160,116 were excluded from the calculation of diluted net loss per share as their inclusion would be anti-dilutive.

The 3.75% Convertible Senior Notes are included in the calculation of diluted net income per share if their inclusion is dilutive under the if-converted method. For the three months ended September 30, 2011, the potential dilutive shares under the 3.75% Convertible Senior Notes were excluded

from the calculation of diluted net loss per share as their inclusion would be anti-dilutive.

Table of Contents

Segment Information

The Company has determined that it operates in only one segment, as it only reports profit and loss information on an aggregate basis to its chief operating decision maker. The Company's long-lived assets maintained outside the United States are not material. Revenue by geographic region is based on the shipping addresses of the Company's customers. The following summarizes revenue by geographic region (in thousands):

	Three Months Ended September 30,	
	2011	2010
Americas (including Puerto Rico)	$ 48,849	$ 23,071
Europe	28,615	9,950
Asia (excluding Japan)	16,157	3,332
Japan	6,830	1,715
Total	$ 100,451	$ 38,068

Recent Accounting Pronouncements

In September 2011, the FASB issued ASU No. 2011-08, *Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment*, applicable for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The guidance allows an entity the option to make a qualitative evaluation about the likelihood of goodwill impairment for a reporting unit. If, after assessing the totality of events or circumstances, an entity determines it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the quantitative two-step impairment test is unnecessary. Early adoption is permitted for annual and interim goodwill impairment tests if an entity's financial statements for the most recent interim period have not yet been issued. The Company does not expect that adoption of this guidance will have a material impact on the Company's condensed consolidated financial position, results of operations and cash flows.

In June 2011, the FASB issued ASU No. 2011-05, *Comprehensive Income (Topic 220)—Presentation of Comprehensive Income*, to require an entity to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. ASU 2011-05 eliminates the option to present the components of other comprehensive income as part of the statement of equity. ASU 2011-05 is effective for the Company in the first quarter of fiscal year 2013 and should be applied retrospectively. The Company is currently evaluating the impact of its pending adoption of ASU 2011-05 on its condensed consolidated financial statements.

3. Alliance Agreement

In June 2010, the Company entered into a Strategic Alliance Agreement with Siemens AG, or the Alliance Agreement, pursuant to which (1) the Company granted Siemens certain distribution rights to its CyberKnife Systems, (2) Siemens agreed to incorporate certain Accuray technology into certain of its linear accelerator ("linac") products, the combined products being known as the Cayman Products, and (3) the Company created a research and development relationship between Accuray and Siemens for the pursuit and implementation of other potential collaboration opportunities in the future. Siemens' right to distribute the CyberKnife System under this agreement remains unchanged, though sales activity to date under the Agreement has not been material. The Company believes that as a result of its acquisition of TomoTherapy, the elements of the Agreement described in sections (2) and (3) above are unlikely to develop further. Under the Alliance Agreement, both Siemens and the Company had the right to terminate the Alliance Agreement on written notice within 60 days following the acquisition of or by either party by specified competitors. On August 3, 2011, the Company entered into an Amendment to the Agreement with Siemens, which provides that each of the Company's and Siemens' right to terminate the Agreement as a result of the acquisition of TomoTherapy by the Company is extended until December 31, 2011 in order to allow the Company and Siemens to evaluate the impact of the TomoTherapy acquisition on the arrangements created by the Agreement. There can be no assurance that the strategic alliance with Siemens AG will be successful or that the economic terms of the Alliance Agreement will ultimately prove to be favorable to the Company or that Siemens will not terminate the Alliance Agreement as a result of the Company's acquisition of TomoTherapy.

Table of Contents

4. Comprehensive Loss

The components of total comprehensive loss were as follows (in thousands):

	Three Months Ended September 30,	
	2011	2010
Net loss	$ (26,510)	$ (4,640)
Unrealized gain on investmnets	—	28
Foreign currency translation adjustments	835	89
Total comprehensive loss	$ (25,675)	$ (4,523)

Accumulated other comprehensive loss at September 30, 2011 and June 30, 2011 consisted of accumulated foreign currency translation adjustments. No comprehensive loss at September 30, 2011 was attributable to CPAC.

5. Balance Sheet Components

Accounts receivable, net

Accounts receivable, net consists of the following (in thousands):

	September 30, 2011	June 30, 2011
Accounts receivable	$ 77,282	$ 59,858
Unbilled fees and services	1,697	2,319
	78,979	62,177
Less: Allowance for doubtful accounts	(1,066)	(324)
Accounts receivable, net	$ 77,913	$ 61,853

Inventories

Inventories consist of the following (in thousands):

	September 30, 2011	June 30, 2011
Raw materials	$ 59,445	$ 60,309
Work-in-process	8,751	10,002
Finished goods	15,122	27,525
Total inventories	$ 83,318	$ 97,836

Property and Equipment, net

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

	September 30, 2011	June 30, 2011
Furniture and fixtures	$ 5,554	$ 5,317
Computer and office equipment	8,429	8,280
Software	8,357	8,107
Leasehold improvements	15,682	15,386
Machinery and equipment	34,072	33,692
CyberKnife shared ownership systems	4,923	4,923
Construction in progress	514	602
	77,531	76,307
Less: Accumulated depreciation and amortization	(35,568)	(31,484)
Property and equipment, net	$ 41,963	$ 44,823

Table of Contents

Depreciation and amortization expense related to property and equipment for the three months ended September 30, 2011 and 2010 was $4.2 million and $1.3 million, respectively. Accumulated depreciation related to the CyberKnife systems attributable to the shared ownership program as of September 30, 2011 and June 30, 2011 was $2.2 million and $2.1 million, respectively.

6. Goodwill and Intangible Assets

Goodwill

Activity related to goodwill consisted of the following (in thousands):

	Three Months Ended September 30, 2011	Year Ended June 30, 2011
Balance at beginning of period	$ 54,474	$ 4,495
Addition related to acquisition	—	49,979
Addition related to prior year acquisition (1)	1,384	—
Balance at end of period	$ 55,858	$ 54,474

(1) The addition to goodwill represents an additional liability incurred as part of the TomoTherapy acquisition.

Intangible Assets

The Company's intangible assets associated with completed acquisitions at September 30, 2011 and June 30, 2011 are as follows (in thousands):

		September 30, 2011			June 30, 2011		
	Useful Lives (in years)	Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Amortization	Net Amount
Developed technology	6	$ 43,455	$ (3,874)	$ 39,581	$ 43,455	$ (2,069)	$ 41,386
Backlog	1.25	10,500	(2,567)	7,933	10,500	(467)	10,033
Distributor license	2.5	1,860	(222)	1,638	1,860	(40)	1,820
In-process research and development (CPAC)	Indefinite	12,800	—	12,800	12,800	—	12,800

$ 68,615	$ (6,663)	$ 61,952	$ 68,615	$ (2,576)	$ 66,039

Amortization expense related to intangible assets was $4.1 million and $0.1 million for the three months ended September 30, 2011 and 2010, respectively.

The estimated future amortization expense of purchased intangible assets, excluding in-process research and development, as of September 30, 2011 is as follows (in thousands):

Year Ending June 30,	Amount
2012 (remaining nine months)	$ 15,689
2013	7,666
2014	7,116
2015	6,933
2016	6,933
Thereafter	4,815
	$ 49,152

Table of Contents

7. Contingencies

Litigation

From time to time, the Company is involved in legal proceedings arising in the ordinary course of its business. Currently, management believes the Company does not have any probable and estimable loss related to any current legal proceedings and claims that would individually or in the aggregate materially adversely affect its financial condition or operating results. Litigation is inherently unpredictable and is subject to significant uncertainties, some of which are beyond the Company's control. Should any of these estimates and assumptions change or prove to have been incorrect, the Company could incur significant charges related to legal matters which could have a material impact on its results of operations, financial position and cash flows.

Accuray Securities Litigation

On July 22, 2009, a securities class action lawsuit was filed in the U.S. District Court for the Northern District of California against the Company and certain of its current and former directors and officers. On August 7, 2009 and August 9, 2009, two securities class action complaints, both similar to the one filed on July 22, 2009, were filed against the same defendants in the same court. These three actions were consolidated. The consolidated complaint generally alleges that the Company and the individual defendants made false or misleading public statements regarding its operations and seek unspecified monetary damages and other relief. On August 31, 2010, the Court granted defendants' motion to dismiss the consolidated complaint and granted plaintiffs leave to file an amended complaint. On September 27, 2010, plaintiffs filed an amended complaint. The amended complaint names the Company and certain of its current and former officers and directors as defendants and generally alleges that the defendants made false or misleading public statements regarding its operations. The amended complaint seeks unspecified monetary damages and other relief. Defendants filed a motion to dismiss the amended complaint. On April 28, 2011, the parties filed a stipulation of settlement with the court, providing for the settlement of the litigation for a payment of $13.5 million which will be covered by insurance. The court preliminarily approved the settlement on June 10, 2011. A hearing on the terms of the settlement was held on September 1, 2011. A final judgment is expected in November of this year.

Litigation relating to the TomoTherapy Acquisition

On March 11, 2011, a purported class action complaint was filed in the Circuit Court for the State of Wisconsin, Dane County, on behalf of a putative class of TomoTherapy shareholders and naming as defendants TomoTherapy and TomoTherapy's board of directors (prior to the acquisition of TomoTherapy by the Company). Thereafter, four additional complaints were filed in the same court on behalf of the same class and against the same defendants, and two such complaints also named the Company and Jaguar Acquisition, Inc., a wholly-owned subsidiary of the Company ("Merger Sub"). On April 4, 2011, all five actions were consolidated. The complaints generally alleged that, in connection with the Company's then proposed merger transaction with TomoTherapy, TomoTherapy's board breached their fiduciary duties by, among other things, failing to maximize the value of TomoTherapy to its shareholders and purportedly agreeing to certain terms in the merger agreement, which were allegedly preclusive and onerous. The complaints further alleged that the Company and Merger Sub aided and abetted TomoTherapy's board of directors in their alleged breaches of fiduciary duties. The plaintiffs sought, among other things, an injunction barring consummation of the merger, rescission or recessionary damages, costs and attorneys' fees. The Company and Merger Sub were dismissed from the litigation without prejudice on April 19, 2011. The consolidated complaint against TomoTherapy and the former directors of TomoTherapy was dismissed with prejudice and without costs to either party on July 5, 2011.

Best Medical Trade Secret Litigation

On September 3, 2009, Best Medical International, Inc. ("Best Medical") filed a lawsuit against the Company in the U.S. District Court for the Western District of Pennsylvania, claiming it induced certain individuals to leave the employment of Best Medical and join the Company in order to gain access to Best Medical's confidential information and trade secrets. Best Medical is seeking monetary damages and other relief. The Company filed a motion for summary judgment on May 20, 2011, Best Medical filed its response on June 21, 2011, and the Company filed a response to their response on July 8, 2011. On October 25, 2011, the court granted summary judgment in favor of the Company on all counts. If Best Medical wishes to appeal the judgment, it must file its notice of appeal on or before November 25, 2011.

Best Medical Patent Litigation

On August 6, 2010, Best Medical filed an additional lawsuit against the Company in the U.S. District Court for the Western District of Pennsylvania, claiming it has infringed U.S. Patent No. 5,596,619, a patent that Best Medical alleges protects a method and apparatus for conformal radiation therapy. On December 2, 2010, the Court granted the Company's motion to dismiss, with leave to amend. On December 16, 2010, Best Medical filed an amended complaint, claiming that the Company also infringed U.S. Patent Nos. 6,038,283 and 7,266,175, both of which Best Medical alleges cover methods and

apparatus for conformal radiation therapy. On March 9, 2011, the Court dismissed with prejudice all counts against the Company, except for two counts of alleged willful infringement of two of the patents. The Court issued a Scheduling Order on May 12, 2011 appointing a special

Table of Contents

master for claim construction, and setting a claim construction hearing on January 10, 2012. Best Medical moved to voluntarily dismiss one of the two remaining patent claims on June 28, 2011, which the court granted on June 30, 2011, leaving only one patent (U.S. Patent No. 6,038,283) at issue in the case. On September 1, 2011, the Court modified its Scheduling Order, setting a claim construction hearing on January 24-25, 2012. Best Medical is seeking declaratory and injunctive relief, as well as unspecified compensatory and treble damages and other relief. At this time, the Company does not have enough information to estimate what, if any, financial impact this claim will have.

TomoTherapy Former Distributor in Japan

On July 17, 2009, Hi-Art Co., Ltd. (Hi-Art), TomoTherapy's former distributor in Japan, filed a complaint against TomoTherapy in the Tokyo District Court seeking compensation it claimed was owed by TomoTherapy. The Company and Hi-Art entered into a settlement agreement pursuant to which the Company agreed to pay 190,000,000 yen (or approximately $2.3 million) and Hi-Art dropped all claims against TomoTherapy and the Company. On July 26, 2011, the Court approved the settlement and issued a decree dismissing the case. The settlement amount was paid during the fiscal quarter ended September 30, 2011.

Rotary Systems

On April 28, 2011, a former supplier to TomoTherapy, Rotary Systems Incorporated, filed suit in Minnesota state court, Tenth Judicial District, Anoka County, against TomoTherapy alleging misappropriation of trade secrets, as well as several other counts alleging various theories of injury. Rotary Systems alleges TomoTherapy misappropriated Rotary Systems' trade secrets pertaining to a component previously purchased from Rotary Systems, which component TomoTherapy now purchases from a different supplier. The suit alleges TomoTherapy improperly supplied the alleged trade secrets to its present supplier, Dynamic Sealing Technologies Inc. (also a named defendant in the suit). Rotary Systems has made an unspecified claim for damages of greater than $50,000. TomoTherapy moved to dismiss the case in June 2011, and on August 29, 2011, the court granted the motion to dismiss with respect to all counts other than the count alleging misappropriation of trade secrets. At this time, we do not have enough information to estimate what, if any, financial impact this claim will have.

Radiation Stabilization Solutions Patent Litigation

On September 15, 2011, Radiation Stabilization Solutions, LLC filed a patent infringement complaint in the United States District Court for the Northern District of Illinois, Eastern Division. The complaint, alleged the Company's sale of our TomoHD product induces infringement of or contributorily infringes U.S. Patent No. 6,118,848, or the '848 Patent, and sought unspecified monetary damages for the alleged infringement. The complaint also named Varian Medical Systems, Inc., BrainLab AG, BrainLab, Inc., Elekta AB and Elekta, Inc. as defendants, alleging that certain of their products also infringe the '848 patent. On October 27, 2011, the Court dismissed the complaint without prejudice because non-resident defendants had been improperly named in the complaint. On October 28, 2011, Radiation Stabilization Solutions filed a new complaint in the same district against the Company and a customer of the Company. The new complaint, which has not yet been served on the Company, repeats the original complaint's allegations against the Company, further alleges that the customer directly and indirectly infringes the '848 patent, and seeks unspecified monetary damages for the alleged infringement. Radiation Stabilization Solutions also re-filed individual suits against each of Varian and Elekta and several of their respective customers, but has not re-filed a complaint against BrainLab. At this time, we do not have enough information to estimate what, if any, financial impact this claim will have.

Software License Indemnity

Under the terms of the Company's software license agreements with its customers, the Company agrees that in the event the software sold infringes upon any patent, copyright, trademark, or any other proprietary right of a third party, it will indemnify its customer licensees against any loss, expense, or liability from any damages that may be awarded against its customer. The Company includes this infringement indemnification in all of its software license agreements and selected managed services arrangements. In the event the customer cannot use the software or service due to infringement and the Company cannot obtain the right to use, replace or modify the license or service in a commercially feasible manner so that it no longer infringes, then the Company may terminate the license and provide the customer a refund of the fees paid by the customer for the infringing license or service. The Company has recorded no liability associated with this indemnification, as it is not aware of any pending or threatened actions that represent probable losses as of September 30, 2011.

Table of Contents

8. Acquisition

On June 10, 2011, the Company completed the acquisition of TomoTherapy by acquiring all of TomoTherapy's common stock in exchange for cash and shares of Accuray common stock. TomoTherapy is a creator of advanced radiation therapy solutions for cancer care. The objective of the acquisition is to create a company that can provide patients with radiation treatments tailored to their specific needs, from high-precision radiosurgery to image-guided, intensity-modulated radiation therapy. The Company has included the financial results of TomoTherapy in its condensed consolidated financial statements from the date of acquisition.

The total purchase price for TomoTherapy was approximately $248.0 million and was comprised of the following (in thousands):

Cash	$	174,178
Common stock issued (9,112,511 shares)		67,341
Stock options assumed (1,539,255 shares)		2,234
RSAs assumed (429,591 shares)		4,270
	$	248,023

The unaudited pro forma results presented below include the effects of pro forma adjustments as if TomoTherapy was acquired on July 1, 2009. The nonrecurring pro forma adjustments are primarily the result of fair value adjustments to intangible assets, inventory, fixed assets and deferred revenue. The pro forma financial results do not include any anticipated synergies or other expected benefits of the acquisition. The table below is presented for informational purposes only and is not indicative of future operations or results that would have been achieved had the acquisition been completed as of July 1, 2009 (in thousands, except per share amounts).

	Three Months Ended September 30, 2010 (unaudited)
Net revenue	$ 79,853
Net loss attributable to stockholders	$ (22,318)
Diluted loss per share	$ (0.33)

9. Share-Based Compensation

The following table summarizes the share-based compensation charges included in the Company's condensed consolidated statements of operations (in thousands):

	Three Months Ended September 30,	
	2011	2010
Cost of revenue	$ 558	$ 463
Selling and marketing	229	244
Research and development	602	674
General and administrative	1,220	1,115
	$ 2,609	$ 2,496

At September 30, 2011 and June 30, 2011, capitalized share-based compensation costs of $0.3 million were included as components of inventories.

10. Debt

On August 1, 2011, the Company issued $100 million aggregate principal amount of 3.75% Convertible Senior Notes due August 1, 2016, (the "Notes") to certain qualified institutional buyers or QIBs. The Notes were offered and sold to the QIBs pursuant to Rule 144A under the Securities Act of 1933, as amended. The net proceeds from the offering, after deducting the initial purchaser's discount and commission and the related offering costs, were approximately $96.1 million. The offering costs and the initial purchaser's discount and commission (which are recorded in Other Assets) are both being amortized to interest

Table of Contents

expense using the effective interest method over five years. The Notes bear interest at a rate of 3.75% per year, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning on February 1, 2012. The Notes will mature on August 1, 2016, unless earlier repurchased, redeemed or converted.

The Notes were issued under the Indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. The Notes are convertible, as described below, at the Company's election, into common stock of the Company, cash or a combination thereof at an initial conversion rate equal to 105.5548 shares of common stock per $1,000 principal amount of the Notes, which is equivalent to a conversion price of approximately $9.47 per share of common stock, subject to adjustment. Holders of the Notes may convert their Notes at any time on or after May 1, 2016 until the close of business on the business day immediately preceding the maturity date. Prior to May 1, 2016, holders of the Notes may convert their Notes only under the following circumstances: (1) during any calendar quarter after the calendar quarter ending September 30, 2011, and only during such calendar quarter, if the closing sale price of the Company's common stock for each of 20 or more trading days in the 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price in effect on the last trading day of the immediately preceding calendar quarter; (2) during the five consecutive business days immediately after any five consecutive trading-day period (such five consecutive trading-day period, the "Note Measurement Period") in which the trading price per $1,000 principal amount of Notes for each trading day of that Note Measurement Period was equal to or less than 98% of the product of the closing sale price of shares of the Company's common stock and the applicable conversion rate for such trading day; (3) if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on the business day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate transactions as described in the Indenture.

Holders of the Notes who convert their Notes in connection with a make-whole fundamental change, as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, in the event of a fundamental change, as defined in the Indenture, holders of the Notes may require the Company to purchase all or a portion of their Notes at a fundamental change repurchase price equal to 100% of the principal amount of Notes, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date.

On or after August 1, 2014 and prior to the maturity date, the Company may redeem for cash all or a portion of the Notes if the closing sale price of its common stock exceeds 130% of the applicable conversion price (the initial conversion price is approximately $9.47 per share of common stock) of such Notes for at least 20 trading days during any consecutive 30 trading-day period (including the last trading day of such period).

In accordance with ASC 470-20 *Debt with Conversion and Other* Options, the Company separately accounts for the liability and equity conversion components of the Notes. The principal amount of the liability component of the Notes was $75.9 million as of date of issuance, which was recognized at the present value of its cash flows using a discount rate of 10%, our approximate borrowing rate at the date of the issuance for a similar debt instrument without the conversion feature. The carrying value of the equity conversion component was $24.1 million. A portion of the initial purchaser's discount and commission and the offering costs totaling $0.9 million was allocated to the equity conversion component. The liability component will be accreted to the principal amount of the Notes using the effective interest method over five years.

The following table presents the carrying value of the Notes as of September 30, 2011 (in thousands):

Carrying amount of the equity conversion component	$	23,189
Principal amount of the Notes	$	100,000
Unamortized debt discount (1)		(23,491)
Net carrying amount	$	76,509

(1) As of September 30, 2011, the remaining period over which the unamortized debt discount will be amortized is 58 months.

A summary of interest expense and interest rate on the liability component related to the Notes for the three months ended September 30, 2011 is as follows (in thousands):

Effective interest rate		10.0%
Interest expense related to contractual interest coupon	$	625
Interest expense related to amortization of debt discount		639
Total interest expense recognized	$	1,264

Table of Contents

11. Investment in CPAC

During April 2008, TomoTherapy established a new affiliate, CPAC, to develop a compact proton therapy system for the treatment of cancer. CPAC's investors include TomoTherapy, private investors and potential customers.

TomoTherapy contributed intellectual property with a fair market value of approximately $1.9 million as its investment in CPAC. CPAC raised additional capital of $6.6 million and $6.9 million during 2010 and 2009, respectively, through the sale of stock. As of September 30, 2011, the Company's ownership interest in CPAC was 5.5%. Although TomoTherapy's ownership in CPAC is less than 50%, the Company includes CPAC in its condensed consolidated financial statements because TomoTherapy is the primary beneficiary of CPAC due to its overall control of CPAC's activities and TomoTherapy's option to purchase a portion of the CPAC stock held by other CPAC investors. CPAC's outside stockholders' interests are shown in the Company's condensed consolidated financial statements as "Noncontrolling interests."

In December, 2010, TomoTherapy and certain other CPAC investors purchased convertible promissory notes from CPAC. Under the terms of the notes, TomoTherapy received warrants for 1,386,983 common shares of CPAC. Total consideration for the notes TomoTherapy purchased was $0.8 million. Other participating investors purchased $0.8 million of the convertible promissory notes and received warrants for an aggregate of 1,386,981 shares of CPAC. The convertible promissory notes to the other participating investors in CPAC are included in "Other accrued liabilities" in the Company's condensed consolidated balance sheets. The notes bear interest at 12% and are convertible into CPAC's common stock at a per share conversion price as defined in the notes. The CPAC warrants are exercisable through November 2020 at an exercise price of $0.57 per CPAC common share. At September 30, 2011, no notes had been converted and no warrants had been exercised.

On March 9, 2011, TomoTherapy entered into a revolving promissory note with CPAC. On May 10, 2011, the revolving promissory note was amended to increase the maximum amount available to borrow to $1.9 million. As of September 30, 2011, $1.9 million was outstanding under the revolving promissory note. The revolving promissory note bears interest at 12% per annum compounded quarterly. The revolving promissory note expires and all amounts become due on the earlier of December 31, 2011, a transaction involving a change of control, or an event of default.

On September 13, 2011 and October 18, 2011, Accuray and certain other CPAC investors purchased convertible promissory notes from CPAC. Total consideration for the notes Accuray purchased was $0.4 million. The other investors purchased a total of $0.4 million of the convertible promissory notes. The convertible promissory notes held by the other investors are included in "Other accrued liabilities" in the Company's condensed consolidated balance sheets. The convertible promissory notes issued in September and October 2011 bear interest at 12% per annum and are convertible upon the earlier of (a) a voluntary conversion, at a conversion price agreed by CPAC and holders of notes having at least 70% of the aggregate outstanding principal balance, and (b) an automatic conversion, simultaneously with the closing of CPAC's next financing of a specified amount, at a specified per share conversion price.

In addition to the relationships described above, TomoTherapy also has a contractual agreement to provide certain accounting and back office support and management services to CPAC. Also, Accuray may provide additional financial support to CPAC in the future. Settlements of CPAC's obligations are restricted to the assets of CPAC, and creditors and beneficial interest holders of CPAC have no contractual recourse to TomoTherapy or the Company.

Table of Contents

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

The following discussion and analysis of our financial condition as of September 30, 2011 and results of operations for the three months ended September 30, 2011 and 2010 should be read together with our condensed consolidated financial statements and related notes included elsewhere in this report. This discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including, but not limited to, statements regarding the extent and timing of future revenues and expenses, statements regarding reimbursement rates, statements regarding regulatory requirements, statements regarding future orders, statements regarding the cancer treatment market, statements regarding our strategy, statements regarding our strategic alliance with Siemens AG, statements regarding our products, statements regarding revenues, earnings or other financial results, statements regarding intellectual property rights, statements regarding the

acquisition of TomoTherapy (including our expected timing for the acquisition to be accretive) and other statements using words such as "anticipates," "believes," "could," "estimates," "expects," "forecasts," "intends," "may," "plans," "projects," "should," "will" and "would," and words of similar import and the negatives thereof. Our actual results, performance or achievements could differ materially from those expressed or implied by the forward-looking statements on the basis of several factors, including those that we discuss in Risk Factors, set forth in Part II, Item 1A of this quarterly report on Form 10-Q. We encourage you to read that section carefully. We urge you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report and are subject to business and economic risks. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. We undertake no obligation to update any forward-looking statements to reflect any event or circumstance that arises after the date of this report.

In this report, "Accuray," the "Company," "we," "us," and "our" refer to Accuray Incorporated and its subsidiaries.

Overview

Products and Markets

We believe we are the premier radiation oncology company based on our history of rapid innovation and our leading edge technologies designed specifically to deliver radiosurgery, stereotactic body radiation therapy, intensity modulated radiation therapy, image guided radiation therapy, and adaptive radiation therapy that is tailored to the specific needs of each patient. Our suite of products includes the CyberKnife® System and the TomoTherapy® System. The systems are highly complementary offerings, serving distinct patient populations treated by the same medical specialty.

The CyberKnife Systems are robotic systems designed to deliver radiosurgery treatments to cancer tumors anywhere in the body. They are the only dedicated, full body radiosurgery systems on the market. Radiosurgery is an alternative to traditional surgery for tumors and is performed on an outpatient basis in one to five treatment sessions. It allows for the treatment of patients who otherwise would not be treated with radiation, who may not be good candidates for surgery, or who desire non-surgical treatments. The use of radiosurgery with CyberKnife Systems to treat tumors throughout the body has grown significantly in recent years, but currently represents only a small portion of the patients who develop tumors treatable with CyberKnife Systems. A determination of when it may or may not be appropriate to use a CyberKnife System for treatment is at the discretion of the treating physician and depends on the specific patient. Given, however, the CyberKnife Systems' design to treat focal tumors, the CyberKnife Systems are generally not used to treat (1) very large tumors, which are considerably wider than the radiation beam that can be delivered by CyberKnife Systems, (2) diffuse, wide-spread disease, as is often the case for late stage cancers, because they are not localized (though CyberKnife Systems might be used to treat a focal area of the disease) and (3) systemic disease, like leukemias and lymphomas, which are not localized to an organ, but rather involve cells throughout the body.

We believe that the long term success of the CyberKnife System is dependent on a number of factors including the following:

- Change in medical practice to utilize radiosurgery more regularly as an alternative to surgery or other treatments;
- Greater awareness among doctors and patients of the benefits of radiosurgery with the CyberKnife System;
- Continued evolution in clinical studies demonstrating the safety and efficacy of the use of the CyberKnife System to treat tumors in various parts of the body;

Table of Contents

- Continued advances in technology which improve the quality of treatments and ease of use of the CyberKnife System;
- Improved access to radiosurgery with the CyberKnife System in various countries through regulatory approvals and / or medical insurance reimbursement rates; and
- Expansion of sales of CyberKnife Systems in countries throughout the world.

The TomoTherapy Systems are advanced, fully integrated and versatile radiation therapy systems for the treatment of a wide range of cancer types. We began selling TomoTherapy Systems after our acquisition of TomoTherapy Incorporated on June 10, 2011. Radiation therapy is used in a variety of ways, often to treat tissue surrounding a tumor area after surgical removal of the tumor and also as the primary treatment for tumors. Radiation therapy treatments impact both cancer cells as well as healthy tissue; therefore the total prescribed radiation dose is divided into many fractions and delivered in an average of 25 to 35 treatment sessions over several weeks. Radiation therapy has been widely available and used in developed countries for decades, though many developing countries do not currently have a sufficient number of linacs to adequately treat their domestic cancer patient populations. The number of radiation therapy systems in use and sold each year is currently many times larger than the number of radiosurgery systems. Large companies, including Varian Medical Systems, Inc., Elekta AB and Siemens AG, generate most sales in this market. While the market for radiation therapy systems is very large and well established, growth in demand for radiation therapy system is generally considered to be lower than for radiosurgery systems. We believe the TomoTherapy Systems offer clinicians and patients significant benefits over other radiation therapy systems in the market. We believe our ability to capture more sales in this established market will be influenced by a number of factors including the following:

- Greater awareness among doctors and patients of the benefits of radiation therapy using TomoTherapy Systems;
- Advances in technology which improve the quality of treatments and ease of use of TomoTherapy Systems; and
- Expansion of TomoTherapy System sales in countries throughout the world.

Sale of Our Products

Generating revenue from the sale of our systems is a lengthy process. Selling our systems, from first contact with a potential customer to a complete order, generally spans six months to two years and involves personnel with multiple skills. The time from receipt of a complete order to revenue recognition

is governed generally by the time required by the customer to build, renovate or prepare the treatment room for installation of the system. This time varies significantly, generally from 6 to 24 months.

In the United States, we sell to customers, including hospitals and stand-alone treatment facilities, directly through our sales organization. Outside the United States, we sell to customers in over 80 countries directly and through distributors. We have sales and service offices in France, Belgium, Germany, England, Spain, Turkey, Russia, India, Japan, Hong Kong, China and Singapore. The following table shows the number of systems installed by geographic region as of September 30, 2011:

Americas	360
Asia	116
Europe	122
Total	598

International sales of our products account for a significant and growing portion of our total revenue. Revenue derived from sales outside of the United States was $51.6 million and $15.0 million for the three months ended September 30, 2011 and 2010, respectively, and international sales as a percentage of our total revenue was 51% and 39% for the three months ended September 30, 2011 and 2010, respectively. The increase in international revenue resulted from the inclusion of sales of TomoTherapy products and services in the quarter ended September 30, 2011, the first full quarter since the acquisition of TomoTherapy closed on June 10, 2011.

Backlog

Beginning in fiscal 2012 (the fiscal year beginning July 1, 2011), we are reporting backlog in a manner that is common for all of our products.

- Products: Orders for systems, upgrades, and our shared ownership program will be reported in backlog, excluding amounts attributable to warranty service, training and installation.

Table of Contents

- Service: Orders for service, warranty, installation, training and other recurring revenues will not be reported in backlog. Previously, orders for service were reported in backlog for CyberKnife Systems but not for TomoTherapy Systems.

For orders that cover both products and services, only the portion of the order that will be recognized as product revenue will be reported as backlog. The portion of the order that will be recognized as service revenue (for example, warranty service, installation and training) will not be included in reported backlog. Additionally, orders for TomoTherapy that met the historical TomoTherapy backlog criteria have been grandfathered into, and are included in, our backlog, with the exception of orders that would have “aged out” as of June 30, 2011. TomoTherapy previously did not have an “age out” criteria, so we have adjusted the TomoTherapy backlog to age out orders where 2.5 years have passed from the time the order entered TomoTherapy’s backlog. As of September 30, 2011, product only backlog was $270.8 million in total. These amounts are calculated based on the criteria set forth below and therefore are not comparable to backlog amounts previously reported for CyberKnife or TomoTherapy Systems, which were calculated using different criteria. Accordingly, we have not included, for comparison purposes, backlog amounts for the three months ended September 30, 2010 for either CyberKnife or TomoTherapy Systems, due to the changes in methodology.

Beginning with July 1, 2011, in order for the product portion of a sales agreement to be counted as backlog, it must meet the following criteria:

- The contract is signed and properly executed by both the customer and us. A customer purchase order that is signed and incorporates the terms of our contract quote will be considered equivalent to a signed and executed contract;
- The contract is non-contingent—it either has cleared all its contingencies or contains no contingencies when signed;
- We have received a deposit or a letter of credit; the sale is a direct channel sale to a government entity, or the product has shipped to a customer with credit sufficient to cover the deposit;
- The specific end customer site has been identified by the customer in the written contract or written amendment; and
- Less than 2.5 years have passed since the contract met all the criteria above.

Although our backlog includes only contractual agreements from our customers to purchase CyberKnife Systems or TomoTherapy Systems, we cannot make assurances that we will convert backlog into recognized revenue due to factors outside our control including without limitation, changes in customers’ needs, changes in reimbursement, changes to regulatory requirements, or other cancellation of orders.

Material Weakness in Internal Control Over Financial Reporting

In connection with our evaluation of internal control over financial reporting for the fiscal year ended June 30, 2011 and the fiscal quarter ended September 30, 2011, we identified a material weakness relating to our accounting for significant, non-routine transactions. During the three months ended September 30, 2011, our efforts to remediate the previously reported material weakness in internal controls over financial reporting consisted of the following corrective actions:

- We began actively recruiting for several positions within the finance function, which will provide us with the appropriate resources and technical skills to ensure that the period-end financial close and reporting processes are completed in an adequate and reliable manner.
- We implemented a practice, pursuant to which we consulted with, and will continue to consult with external subject matter experts as necessary to address any significant, non-routine transactions that may arise in order to validate the accounting approach prior to execution.

Although we have taken measures to remediate the previously reported material weakness mentioned above, as well as other significant deficiencies and control deficiencies, we cannot assure you that we have identified all, or that we will not in the future have additional material weaknesses, significant deficiencies and control deficiencies.

Table of Contents

Results of Operations

Three Months Ended September 30, 2011 Compared to Three Months Ended September 30, 2010

Net Revenue

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
Products	$ 56,174	$ 19,916	$ 36,258	182%
Services	43,401	17,734	25,667	145%
Other	876	418	458	110%
Net Revenue	$ 100,451	$ 38,068	$ 62,383	164%

Total net revenue for the three months ended September 30, 2011 increased $62.4 million from the three months ended September 30, 2010 to $100.5 million. This increase was due to the addition of $69.3 million of revenue related to our TomoTherapy products, less a decline of $6.9 million in revenue related to our CyberKnife products due to fewer unit sales and a change in mix of products sold. We acquired TomoTherapy on June 10, 2011, therefore our results for the period ended September 30, 2010 did not include any revenues or cost of revenues related to TomoTherapy products.

The increase in product revenue for the three months ended September 30, 2011 as compared to the comparable period in 2010 was due to $44.9 million related to TomoTherapy products, less a decline of $8.6 million related to CyberKnife products. The increase in service revenue for the three months ended September 30, 2011 as compared to the comparable period in 2010 was due to $23.6 million related to TomoTherapy service revenue plus an increase of $2.0 million related to CyberKnife service revenue. In accordance with purchase accounting standards, a number of adjustments were recorded to the value of assets and liabilities of TomoTherapy as of the closing of the acquisition on June 10, 2011. During the three months ended September 30, 2011, $5.1 million of the write-up of deferred service revenue was recognized as service revenue. We anticipate the balance of this write-up will be recognized as service revenue through the third quarter of fiscal 2012.

We expect our service revenue to increase as our installed base continues to grow.

Gross Profit

	Three Months Ended September 30, 2011 (Dollars in thousands)	2011 (% of net revenue)	2010 (Dollars in thousands)	2010 (% of net revenue)
Gross profit	$ 24,428	24.3%	$ 18,237	47.9%
Products	$ 17,801	31.7%	$ 12,419	62.4%
Services	$ 6,052	13.9%	$ 5,934	33.5%
Other	$ 575	65.6%	$ (116)	-27.8%

Our gross profit margin for the three months ended September 30, 2011 was 23.6 percentage points lower than during the three months ended September 30, 2010. This decline was due principally to the lower gross profit margin of 17% on TomoTherapy revenues included in our results of operations for the three months ended September 30, 2011. In addition, the gross profit margin on CyberKnife revenues declined by 7.2 percentage points due to low product shipments and a different product mix which resulted in lower average selling prices.

In accordance with purchase accounting standards, a number of adjustments were recorded to the value of assets and liabilities of TomoTherapy as of the closing of the acquisition on June 10, 2011. These included the write-up of inventory based on selling price rather than cost of manufacturing, the write-down of deferred product revenue, the write-up of deferred service revenue, and the recording of intangible assets related to developed technology and to backlog existing at the time of the acquisition. On the acquisition date, deferred service and product revenues were valued at cost plus a reasonable margin. Including the results of these and other purchase accounting adjustments, the results from the sale of TomoTherapy services for the three months ended September 30, 2011 reflect a negative gross margin. Also, the results from the sale of TomoTherapy products were negatively impacted by these purchase accounting adjustments during the same period. Products revenue was reduced by $0.3 million while product cost of revenues was increased by $11.4 million. Services revenue was increased by $5.1 million and services cost of revenues was increased by $2.4 million. We expect that the impact of the purchase accounting adjustments to inventory and deferred revenues will flow through our statement of operations from the date of the acquisition through the third quarter of fiscal 2012.

Table of Contents

Selling and Marketing

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
Sales and marketing	$ 13,581	$ 7,760	$ 5,821	75%
Percentage of net revenue	*13.5%*	*20.4%*		

Selling and marketing expenses for the three months ended September 30, 2011 increased $5.8 million compared to the three months ended September 30, 2010. The increase was attributable in part to higher expense for employee related expenses and sales commissions of $3.2 million, travel expense of $1.1 million, consulting fees associated with the integration of TomoTherapy of $0.6 million, and tradeshows expense of $0.3 million. During the three months ended September 30, 2011, we incurred $4.8 million of selling and marketing expenses from our TomoTherapy subsidiary consisting primarily of employee related expenses and sales commissions of $3.3 million, travel expense of $0.7 million and tradeshows expense of $0.3 million.

Research and Development

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
Research and development	$ 20,565	$ 8,047	$ 12,518	156%
Percentage of net revenue	*20.5%*	*21.1%*		

Research and development, or R&D, expenses for the three months ended September 30, 2011 increased $12.5 million compared to the three months ended September 30, 2010. The increase was attributable in part to higher employee related expense of $7.7 million, increased spending for R&D projects of $3.0 million and higher travel expense of $0.4 million. During the three months ended September 30, 2011, we incurred $10.2 million of R&D expenses from our TomoTherapy subsidiary consisting primarily of employee related expenses of $6.4 million and consulting expense of $1.9 million.

General and Administrative

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
General and administrative	$ 14,969	$ 8,559	$ 6,410	75%
Percentage of net revenue	*14.9%*	*22.5%*		

General and administrative, or G&A, expenses for the three months ended September 30, 2011 increased $6.4 million compared to the three months ended September 30, 2010. The increase was attributable in part to consulting, accounting and legal fees of $3.7 million, of which $1.1 million was associated with the integration of TomoTherapy and increased employee related expense of $2.2 million. During the three months ended September 30, 2011, we incurred $2.5 million of G&A expenses from our TomoTherapy subsidiary consisting primarily of employee related expenses of $1.9 million and consulting, accounting and legal fees of $0.6 million.

Other Income (Expense), Net

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
Other income (expense), net	$ (2,858)	$ 1,616	$ (4,474)	-277%
Percentage of net revenue	*-2.8%*	*4.3%*		

Other income (expense), net, was a $2.9 million expense for the three months ended September 30, 2011 compared to net other income of $1.6 million for the three months ended September 30, 2010. During the three months ended September 30, 2011, we incurred interest expense of $1.4 million primarily related to our 3.75% Convertible Senior Notes and a foreign currency loss of $1.5 million. During the three months ended September 30, 2010, our other income, net, consisted primarily of $1.6 million related to foreign currency transaction gains as a result of the appreciation of the Euro-U.S. dollar foreign exchange rate and its effects on the re-measurement of balances and translation of transactions denominated in Euros.

Table of Contents

Provision for Incomes Taxes

(Dollars in thousands)	Three Months Ended September 30, 2011	2010	Variance	Variance in Percent
Provision for income taxes	$ 538	$ 127	$ 411	324%
Percentage of net revenue	*0.5%*	*0.3%*		

On a quarterly basis, we provide for income taxes based upon an estimated annual effective income tax rate. For the three months ended September 30, 2011 and 2010, we recorded income tax expense of $0.5 million and $0.1 million, respectively. The increase was primarily related to an increase in corporate earnings of our foreign subsidiaries.

Liquidity and Capital Resources

At September 30, 2011, we had $140.2 million in cash and cash equivalents. Our existing cash and cash equivalents balances may decline in fiscal 2012 in the event of a weakening of the global economy or changes in our planned cash outlay. Cash from operations could also be affected by various risks and uncertainties, including, but not limited to the risks detailed in Part II, Item 1A titled “Risk Factors.” However, based on our current business plan and revenue prospects, we believe that we will have sufficient cash resources and anticipated cash flows to continue operations for at least the next 12 months.

Cash Flows From Operating Activities

Net cash used in operating activities was $51.8 million for the three months ended September 30, 2011. Our net loss of $28.1 million contributed to the use of cash. Negative cash flow from working capital changes includes primarily a decrease in accrued liabilities of $22.2 million, a decrease in accounts payable of $14.0 million and an increase in account receivable of $16.7 million, partially offset primarily by a decrease in inventory of $11.5 million. Non-cash charges included $2.6 million of share-based compensation, $8.3 million of depreciation and amortization expense, the provision for write-down of inventories of $1.6 million and accretion of interest on the Convertible Senior Notes of $0.6 million.

Net cash used in operating activities was $10.2 million for the three months ended September 30, 2010. Our net loss of $4.6 million contributed to the use of cash. Negative cash flow from working capital changes includes primarily a decrease in accrued liabilities of $3.6 million, a decrease in deferred revenue, net of deferred cost of revenue of $4.9 million, an increase in inventories of $3.0 million and a decrease in accounts payable of $1.4 million. This was partially offset primarily by an increase in customer advances of $2.5 million and a $1.6 million decrease in accounts receivable. The decrease in deferred revenue, net of deferred cost of revenue, was primarily a result of the recognition of revenue previously deferred for systems sold under our Platinum plan, offset partially by differences between invoicing customers for products and services and the recognition of the invoicing as revenue. Non-cash charges included $2.5 million of stock-based compensation and $1.4 million of depreciation and amortization expense.

Cash Flows From Investing Activities

Net cash used in investing activities was $2.4 million for the three months ended September 30, 2011, which consisted of $1.4 million related to the acquisition of TomoTherapy and cash used for purchases of property and equipment of $1.0 million.

Net cash provided by investing activities was $6.1 million for the three months ended September 30, 2010, which was primarily attributable to net marketable security activities of $7.4 million, which consisted of $54.3 million of sale and maturity of marketable securities, offset by $46.9 million in purchases, and $1.3 million of cash used for purchases of property and equipment.

Cash Flows From Financing Activities

Net cash provided by financing activities was $97.0 million for the three months ended September 30, 2011. In August 2011, we issued 3.75% Convertible Senior Notes due August 1, 2016 for net proceeds of $96.1 million. In addition, we received $0.9 million attributable to proceeds from the exercise of common stock options and the purchase of common stock under our employee stock plans.

Net cash provided by financing activities of $0.8 million for the three months ended September 30, 2010 was attributable to proceeds from the exercise of common stock options and the purchase of common stock under our employee stock plans.

Table of Contents

Convertible Debt

On August 1, 2011, we issued $100 million aggregate principal amount of 3.75% Convertible Senior Notes due August 1, 2016, (the “Notes”) to certain qualified institutional buyers or QIBs. The Notes were offered and sold to the QIBs pursuant to Rule 144A under the Securities Act of 1933, as amended. The net proceeds from the offering, after deducting the initial purchaser’s discount and commission and related offering costs were approximately $96.1 million. The offering costs and the initial purchaser’s discount and commission (which are recorded in Other Assets) are both being amortized to interest expense using the effective interest method over five years. The Notes bear interest at a rate of 3.75% per year, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning on February 1, 2012. The Notes will mature on August 1, 2016, unless earlier repurchased, redeemed or converted.

The Notes were issued under the Indenture between us and The Bank of New York Mellon Trust Company, N.A., as trustee. The Notes are convertible, as described below, at our election, into our common stock, cash or a combination thereof at an initial conversion rate equal to 105.5548 shares of common stock per $1,000 principal amount of the Notes, which is equivalent to a conversion price of approximately $9.47 per share of common stock, subject to adjustment. Holders of the Notes may convert their Notes at any time on or after May 1, 2016 until the close of business on the business day immediately preceding the maturity date. Prior to May 1, 2016, holders of the Notes may convert their Notes only under the following circumstances: (1) during any calendar quarter after the calendar quarter ending September 30, 2011, and only during such calendar quarter, if the closing sale price of our common stock for each of 20 or more trading days in the 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price in effect on the last trading day of the immediately preceding calendar quarter; (2) during the five consecutive business days immediately after any five consecutive trading-day period (such five consecutive trading-day period, the “Note Measurement Period”) in which the trading price per $1,000 principal amount of Notes for each trading day of that Note Measurement Period was equal to or less than 98% of the product of the closing sale price of shares of our common stock and the applicable conversion rate for such trading day; (3) if we call any or all of the Notes for redemption, at any time prior to the close of business on the business day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate transactions as described in the Indenture.

Holders of the Notes, who convert their Notes in connection with a make-whole fundamental change, as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, in the event of a fundamental change, as defined in the Indenture, holders of the Notes may require us to purchase all or a portion of their Notes at a fundamental change repurchase price equal to 100% of the principal amount of Notes, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date.

On or after August 1, 2014 and prior to the maturity date, we may redeem for cash all or a portion of the Notes if the closing sale price of our common stock exceeds 130% of the applicable conversion price (the initial conversion price is approximately $9.47 per share of common stock) of such Notes for at least 20 trading days during any consecutive 30 trading-day period (including the last trading day of such period).

In accordance with ASC 470-20 *Debt with Conversion and Other* Options, we separately account for the liability and equity conversion components of the Notes. The principal amount of the liability component of the Notes was $75.9 million as of date of issuance, which was recognized at the present value of its cash flows using a discount rate of 10%, our approximate borrowing rate at the date of the issuance for a similar debt instrument without the conversion feature. The carrying value of the equity conversion component was $24.1 million. A portion of the initial purchaser’s discount and commission and the offering costs totaling $0.9 million was allocated to the equity conversion component. The liability component will be accreted to the principal amount of the Notes using the effective interest method over five years.

Operating Capital and Capital Expenditure Requirements

Our future capital requirements depend on numerous factors. These factors include but are not limited to the following:

- Revenue generated by sales of our products, our shared ownership program and service plans;

- Costs associated with our sales and marketing initiatives and manufacturing activities;
- Facilities, equipment and IT systems required to support current and future operations;
- Rate of progress and cost of our research and development activities;
- Costs of obtaining and maintaining FDA and other regulatory clearances of our products;
- Effects of competing technological and market developments;
- Number and timing of acquisitions and other strategic transactions; and
- Costs associated with the integration of TomoTherapy.

Table of Contents

If our cash and cash equivalents are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Additional financing may not be available at all, or in amounts or on terms acceptable to us. If we are unable to obtain this additional financing, we may be required to reduce the scope of our planned product development and marketing efforts.

Contractual Obligations and Commitments

We presented our contractual obligations in our Annual Report on Form 10-K for the previous annual reporting period ended June 30, 2011. There have been no material changes outside of the ordinary course of business in those obligations during the current quarter.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based on our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). The preparation of these condensed consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as revenue and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities. Actual results could therefore differ materially from those estimates if actual conditions differ from our assumptions.

All of our significant accounting policies and methods used in the preparation of our condensed consolidated financial statements are described in “Note 2, Summary of Significant Accounting Policies”, in Notes to the condensed consolidated financial statements. The methods, estimates and judgments that we use in applying our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates regarding matters that are inherently uncertain. Management believes the critical accounting policies and estimates are those related to revenue recognition, business combinations and intangible asset impairment, inventories, share-based compensation expense, income taxes, loss contingencies and corporate bonus expense and accruals.

Revenue Recognition

In the first quarter of fiscal 2011, we adopted Accounting Standards Update, or ASU, 2009-13, *Multiple-Deliverable Revenue Arrangements* (amendments to Accounting Standards Codification, or ASC, Topic 605, *Revenue Recognition*), and ASU 2009-14, *Certain Arrangements That Include Software Elements* (amendments to Financial Accounting Standards Board, or FASB, ASC Topic 985, *Software).* We adopted these new standards on a prospective basis. The revised guidance primarily provides two significant changes: 1) it requires us to allocate revenues in an arrangement using best estimated selling prices, or BESP, of deliverables if we do not have VSOE or third-party evidence, or TPE, of selling price; and 2) it eliminates the residual method and requires us to allocate revenue using the relative selling price method. The BESP is established considering multiple factors including, but not limited to, pricing practices, internal costs, geographies and gross margin. The determination of BESP is made through consultation with and formal approval by our pricing committee, taking into consideration the overall go-to-market pricing strategy. We may modify or develop new go-to-market practices in the future. As these go-to-market strategies evolve, we may modify our pricing practices in the future, which may result in changes in selling prices, impacting both VSOE and BESP. These factors may result in a different allocation of revenue to the deliverables in multiple element arrangements from the current fiscal year, which may change the pattern and timing of revenue recognition for these elements but will not change the total revenue recognized for the arrangement.

We frequently enter into sales arrangements with customers that contain multiple elements or deliverables such as hardware, software and services. In order to comply with GAAP, we have to make a number of reasoned judgments with respect to elements of these sales arrangements, including how to allocate the proceeds received from an arrangement, whether there are multiple elements in the arrangement, whether any undelivered elements are essential to the functionality of the delivered elements and the appropriate timing of revenue recognition with respect to these arrangements. During the first quarter of fiscal 2012, we accounted for pre-adoption multiple elements arrangements which have not subsequently been materially modified under the

residual method and allocated arrangement consideration to each element based upon vendor specific objective evidence, or VSOE, of fair value of the respective elements. VSOE of fair value for each element is based upon our historical standard rates charged for the product or service when such product or service is sold separately or based upon the price established by our management-comprised pricing committee, which has the relevant authority when that product or service is not yet sold separately. Changes to the elements in an arrangement and the ability to establish VSOE of the fair value for those elements could affect the timing and the amount of revenue recognition.

Revenue recognition also depends on all or a combination of the timing of shipment, completion of installation, customer acceptance and the readiness of customers' facilities. If shipments are not made on scheduled timelines, installation schedules are delayed or if the products are not accepted by the customer in a timely manner, our reported revenues may differ materially from expectations.

Examples of the impact of these factors include the following. If the shipment of one of our systems that sold for $4.0 million was delayed, system revenue would be lowered by this $4.0 million, less any amounts deferred for service, training, or other future deliverables. If one of our systems was sold for $4.0 million and the sale involved multiple elements including training and service, a 5% change in BESP of the system could result in an approximately $25,000 impact to the amount of revenue allocated and recognized as product revenue rather than as service revenue.

Business Combinations and Intangible Asset Impairment

Our methodology for allocating the purchase price relating to business combinations is determined through established valuation techniques. The allocation of the purchase price to intangible assets requires us to make significant estimates and assumptions, including estimates of future cash flows expected to be generated by the acquired assets and appropriate discount rate for those cash flows. Goodwill represents the excess of the purchase price over the fair value of tangible and identified intangible net assets of businesses acquired. Goodwill is evaluated for impairment on an annual basis or when impairment indicators are present.

We make judgments about the recoverability of purchased intangible assets with finite lives whenever events or changes in circumstances indicate that an impairment may exist. Recoverability of purchased intangible assets with finite lives is measured by comparing the carrying amount of the asset to the future undiscounted cash flows the asset is expected to generate. Impairment, if any, is measured as the amount by which the carrying value exceeds the fair value of the impaired asset. We review indefinite-lived intangible assets for impairment annually or whenever events or changes in circumstances indicate the carrying value may not be recoverable. Recoverability of indefinite-lived intangible assets is measured by comparing the carrying amount of the asset to the future discounted cash flows the asset is expected to generate. If the asset is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset.

Assumptions and estimates about future values and remaining useful lives of our purchased intangible assets are complex and subjective. They can be affected by a variety of factors, including external factors such as industry and economic trends and internal factors such as changes in our business strategy and our internal forecasts.

Inventories

The valuation of inventory requires us to estimate obsolete or excess inventory as well as damaged inventory. The determination of obsolete or excess inventory requires us to estimate the future demand for our products. We regularly review inventory quantities on hand and adjust for excess and obsolete inventory based primarily on historical usage rates and our estimates of product demand to support future sales and service. If our demand forecast for specific products is greater than actual demand and we fail to reduce purchasing and manufacturing output accordingly, we could be required to write off inventory, which would negatively impact our gross margin. For example, if the actual amount of inventory that is disposed of as obsolete, excess or damaged is 10% larger or smaller than the amount that we estimated at September 30, 2011, then we would need to increase or decrease cost of sales by approximately $2.1 million.

Share-Based Compensation Expense

We use the Black-Scholes option valuation model to estimate the fair value of stock options and Employee Stock Purchase Plan shares. The Black-Scholes model requires the input of highly subjective assumptions. The most significant assumptions are our estimates of the expected volatility and the expected term of the award. Our expected volatility is derived from the historical volatilities of several unrelated public companies within industries related to our business because we do not have sufficient trading history on our common stock. When making the selections of our peer companies within industries related to our business to be used in the volatility calculation, we also considered the stage of development, size and financial leverage of potential comparable companies. In addition, as our historical share option exercise experience as a publicly-held entity does not provide a reasonable

basis upon which to estimate the expected term, we estimate the expected term of options granted by taking the average of the vesting term and the contractual term of the option, as illustrated by the simplified method. The assumptions used in calculating the fair value of share-based payment awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future.

We recognize compensation cost for only those shares expected to vest over the requisite service period of the award. We estimate our forfeiture rate based on an analysis of our actual forfeitures and will continue to evaluate the appropriateness of the forfeiture rate based on recent forfeiture activity and expected future employee turnover. Quarterly changes in the estimated forfeiture rate can have a significant effect on reported share-based compensation expense, as the cumulative effect of adjusting the rate for all expense amortization is recognized in the period the forfeiture estimate is changed. If a revised forfeiture rate is higher than the previously estimated forfeiture rate, an adjustment is made that will result in a decrease to the share-based compensation expense recognized in the consolidated financial statements. If a revised forfeiture rate is lower than the previously estimated forfeiture rate, an adjustment is made that will result in an increase to the share-based compensation expense recognized in the consolidated financial statements. If the estimated forfeiture rate was higher or lower by five percentage points, our share-based compensation expense related to stock options would increase or decrease by approximately 3%, respectively.

Income Taxes

We calculate our current and deferred tax provisions based on estimates and assumptions that could differ from the actual results reflected in our income tax returns filed during the subsequent year. We record adjustments based on filed returns when we have identified and finalized them, which is generally in the third quarter of the subsequent year for U.S. federal and state provisions, respectively. We have placed a full valuation allowance on all net U.S. deferred tax assets because realization of these tax benefits through future taxable income cannot be reasonably assured. We intend to maintain the valuation allowance until sufficient positive evidence exists to support the reversal of the valuation allowance. Any decision to reverse part or all of the valuation allowance would be based on our estimate of future profitability. If our estimate were to be wrong we could be required to charge potentially significant amounts to income tax expense to establish a new valuation allowance.

Our effective tax rate includes the impact of certain undistributed foreign earnings for which we have not provided U.S. taxes because we plan to reinvest such earnings indefinitely outside the United States. We plan foreign earnings remittance amounts based on projected cash flow needs as well as the working capital and long-term investment requirements of our foreign subsidiaries and our domestic operations. Material changes in our estimates of cash, working capital and long-term investment requirements in the various jurisdictions in which we do business could impact our effective tax rate. We are subject to income taxes in the United States and certain foreign countries, and we are subject to corporate income tax audits in some of these jurisdictions. We believe that our tax return positions are fully supported, but tax authorities are likely to challenge certain positions, which may not be fully sustained. However, our income tax expense includes amounts intended to satisfy income tax assessments that result from these challenges. Determining the income tax expense for these potential assessments and recording the related assets and liabilities requires management judgments and estimates. We evaluate our uncertain tax positions in accordance with the guidance for accounting for uncertainty in income taxes. We believe that our reserve for uncertain tax positions is adequate. We review our reserves quarterly, and we may adjust such reserves because of proposed assessments by tax authorities, changes in facts and circumstances, issuance of new regulations or new case law, previously unavailable information obtained during the course of an examination, negotiations between tax authorities of different countries concerning our transfer prices, or the expiration of statutes of limitations.

Loss Contingencies

As discussed in “Note 7, Contingencies”, in Notes to the condensed consolidated financial statements, we are involved in various lawsuits, claims and proceedings that arise in the ordinary course of business. We record a provision for a liability when we believe that it is both probable that a liability has been incurred and the amount can be reasonably estimated. Significant judgment is required to determine both probability and the estimated amount. We review these provisions at least quarterly and adjust these provisions to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and updated information. Currently, we do not have a potential liability related to any current legal proceedings and claims that would individually or in the aggregate materially adversely affect our financial condition or operating results. Litigation is inherently unpredictable and is subject to significant uncertainties, some of which are beyond our control. Should any of these estimates and assumptions change or prove to have been incorrect, we could incur significant charges related to legal matters which could have a material impact on our results of operations, financial position and cash flows.

Table of Contents

Corporate Bonus Expense and Accruals

We record accruals for estimated corporate bonus expense which is paid out in the first quarter of the subsequent fiscal year. Our expense accruals for fiscal 2012 are based on our results for three financial measures: non-GAAP net revenue, non-GAAP gross margin and net dollars to backlog. If we underestimate or overestimate any of these factors during a fiscal year, adjustments to bonus expense and accruals may be necessary in subsequent periods during the year. For example, if our actual results as of the end of a fiscal year yielded a bonus attainment that varied by 5% from our prior estimate, we would need to increase or decrease our bonus expense accrual in the fourth quarter of the fiscal year by approximately $0.2 million.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Foreign Currency Exchange Rate Risk

As of September 30, 2011, there were no amounts in deferred revenue for CyberKnife and TomoTherapy System contracts denominated in a foreign currency, in which system revenue would be recognized in future periods. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. For direct sales outside the United States, we sell in both U.S. dollars and local currencies, which could expose us to additional foreign currency risks, including changes in currency exchange rates. Our operating expenses in countries outside the United States, including some of our commissions related to sales of the CyberKnife and TomoTherapy Systems, are payable in foreign currencies and therefore expose us to currency risk. To the extent that management can predict the timing of payments under sales contracts or for operating expenses that are denominated in foreign currencies, we may engage in hedging transactions to mitigate such risks in the future.

Interest Rate Risk

At September 30, 2011, we had $140.2 million of cash and cash equivalents. Our earnings are affected by changes in interest rates due to the impact those changes have on interest income generated from our cash balances. We believe that, while the instruments we hold are subject to changes in the financial standing of the issuer of such securities, at September 30, 2011, we were not subject to significant levels of interest rate risk as a small amount of our cash was invested in money market funds.

Equity Price Risk

On August 1, 2011, we issued $100 million aggregate principal amount of 3.75% Convertible Senior Notes due August 1, 2016 (the “Notes”). Upon conversion, we can settle the obligation by issuing our common stock, cash or a combination thereof at an initial conversion rate equal to 105.5548 shares of common stock per $1,000 principal amount of the Notes, which is equivalent to a conversion price of approximately $9.47 per share of common stock, subject to adjustment. There is no equity price risk if the share price of our common stock is below $9.47 upon conversion of the Notes. For every $1 that the share price of our common stock exceeds $9.47, we expect to issue $10.6 million in cash or shares of our common stock, or a combination thereof, if all of the Notes are converted.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2011. Based on this evaluation, and because of the continuing material weakness described below, our Chief Executive Officer and Chief Financial Officer concluded that as of September 30, 2011 our disclosure controls and procedures were not effective to provide reasonable assurance that the information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Notwithstanding the material weakness described above, we have performed additional analyses and other procedures to enable management to conclude that our condensed consolidated financial statements included in this report were prepared in accordance with accounting principles generally accepted in the United States of America.

Internal Control over Financial Reporting

Previously Reported Material Weakness

As described herein, and as previously reported in our Annual Report on Form 10-K for the fiscal year ended June 30, 2011, in connection with the audit of our consolidated financial statements for the year ended June 30, 2011 we identified a material weakness in our internal controls over financial reporting related to accounting for significant, non-routine transactions.

Table of Contents

Specifically, we did not have sufficient numbers of highly skilled accountants to provide for a timely analysis, documentation and review of the acquisition of TomoTherapy which closed on June 10, 2011. During the three months ended September 30, 2011, our efforts to remediate this continuing material weakness in our internal controls over financial reporting consisted of the following corrective actions:

- We began actively recruiting for several positions within the finance function which will provide us with the appropriate resources and technical skills to ensure that the period-end financial close and reporting processes are completed in an adequate and reliable manner.

- We implemented a practice, pursuant to which we consulted with, and will continue to consult with external subject matter experts as necessary to address any significant, non-routine transactions that may arise in order to validate the accounting approach prior to execution.

Changes in Internal Control Over Financial Reporting

During the three months ended September 30, 2011, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Control Over Financial Reporting

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

Please refer to Note 7 to the Condensed Consolidated Financial Statements above for a description of certain legal proceedings currently pending against the Company. From time to time we are involved in legal proceedings arising in the ordinary course of our business.

Item 1A. Risk Factors.

Set forth below and elsewhere in this report are descriptions of the risks and uncertainties that could cause our actual results to differ materially from the results contemplated by the forward-looking statements contained in this report. The descriptions below include any material changes to and supersede the descriptions of the risk factors affecting our business previously disclosed in "Part I, Item IA. Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended June 30, 2011.

Risks Related to Our Business

Our long-term success, results of operations and the value of our common stock depend on our ability to successfully combine the TomoTherapy business with our pre-existing business, which may be more difficult, costly or time-consuming than expected.

On June 10, 2011, we acquired TomoTherapy, the business of which we are currently combining with our pre-existing business. Our future success, results of operations and the value of our common stock depend, in part, on our ability to realize the anticipated benefits from integrating the TomoTherapy business with our pre-existing business. To realize these anticipated

Table of Contents

benefits, we must successfully combine our businesses in an efficient and effective manner. If we are not able to achieve these objectives within the anticipated time frame, or at all, the anticipated benefits and cost savings of the acquisition may not be realized fully, or at all, or may take longer to realize than expected, and our results of operations and the value of our common stock may be adversely affected.

The integration process could result in the disruption of existing business, loss of key employees, or inconsistencies in standards, controls, procedures and policies that could adversely affect our ability to maintain relationships with customers, employees, suppliers and other business partners following the acquisition or to achieve the anticipated benefits of the acquisition. Specifically, issues that must be addressed in integrating the operations of TomoTherapy into our pre-existing operations in order to realize the anticipated benefits of the acquisition include, among other things:

- integrating and optimizing the utilization of the properties, equipment, suppliers, distribution channels, manufacturing, service, marketing, promotion and sales activities and information technologies of the combined company;
- consolidating corporate and administrative infrastructures of the combined company;
- coordinating geographically dispersed organizations of the combined company;
- retaining existing customers of, and attracting new customers to, the combined company; and
- conforming standards, controls, procedures and policies, business cultures and compensation structures throughout the combined company.

Integration efforts will also divert management attention and resources. An inability to realize the full extent of the anticipated benefits of the acquisition, as well as any delays encountered in the integration process, could have an adverse effect upon our results of operations, which may affect adversely the value of our common stock.

In addition, the actual integration may result in additional and unforeseen expenses, and the anticipated benefits of the integration plan may not be realized. Actual synergies, if achieved at all, may be lower than what we expect and may take longer to achieve than anticipated. If we are not able to adequately address these challenges, we may be unable to successfully integrate the combined company's operations or to realize the anticipated benefits of the integration.

We have incurred and expect to continue to incur significant costs in connection with the acquisition and integration of TomoTherapy.

We have incurred and expect to continue to incur non-recurring costs associated with combining the operations of TomoTherapy and our pre-existing operations. Most of these costs will be comprised of facilities and systems consolidation costs and employment-related costs. We also have incurred and will continue to incur fees and costs related to integration. Additional unanticipated costs may be incurred in the integration of the combined company's businesses or we may incur transaction-related costs and charges associated with eliminating redundant expenses or write-offs of impaired assets recorded in connection with the acquisition. Although we expect that the elimination of duplicative costs, as well as the realization of other efficiencies related to the integration of the businesses, should allow us to offset incremental transaction and acquisition-related costs over time, this net benefit may not be achieved in the near term, or at all.

If the CyberKnife or TomoTherapy Systems do not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.

Achieving physician, patient, hospital administrator and third-party payor acceptance of the CyberKnife and TomoTherapy Systems as preferred methods of tumor treatment will be crucial to our continued success. Physicians will not begin to use or increase the use of the CyberKnife or TomoTherapy Systems unless they determine, based on experience, clinical data and other factors, that the CyberKnife and TomoTherapy Systems are safe and effective alternatives to current treatment methods. We often need to educate physicians about the use of stereotactic radiosurgery, IGRT and adaptive radiation therapy, convince healthcare payors that the benefits of the CyberKnife and TomoTherapy Systems and their related treatment processes outweigh their costs and help train qualified physicians in the skilled use of the CyberKnife and TomoTherapy Systems. For example, the complexity and dynamic nature of stereotactic radiosurgery and Robotic IMRT as well as adaptive radiation therapy and IGRT, require significant education of hospital personnel and physicians regarding the benefits of stereotactic radiosurgery and Robotic IMRT, as well as adaptive radiation therapy and IGRT, and require departures from their customary practices. We have expended and will continue to expend significant resources on marketing and educational efforts to create awareness of stereotactic radiosurgery and

Table of Contents

Robotic IMRT as well as adaptive radiation therapy and IGRT generally and to encourage the acceptance and adoption of our products for these technologies.

The CyberKnife and TomoTherapy Systems are major capital purchases, and purchase decisions are greatly influenced by hospital administrators who are subject to increasing pressures to reduce costs. These and other factors, including the following, may affect the rate and level of market acceptance of each of the CyberKnife and TomoTherapy Systems:

- The CyberKnife and TomoTherapy Systems' price relative to other products or competing treatments;
- Our ability to develop new products and enhancements and receive regulatory clearances and approval, if required, to existing products in a timely manner;
- Effectiveness of our sales and marketing efforts;
- The impact of the current economic environment on our business, including the postponement by our customers of purchase decisions or required build-outs;
- Capital equipment budgets of healthcare institutions;
- Increased scrutiny by state boards when evaluating certificates of need requested by purchasing institutions;
- Perception by physicians and other members of the healthcare community of the CyberKnife and TomoTherapy Systems' safety, efficacy, efficiency and benefits compared to competing technologies or treatments;
- Publication in peer-reviewed medical journals of data regarding the successful use and longer term clinical benefits of the CyberKnife and TomoTherapy Systems;
- Willingness of physicians to adopt new techniques and the ability of physicians to acquire the skills necessary to operate the CyberKnife and TomoTherapy Systems;
- Extent of third-party coverage and reimbursement rates, particularly from Medicare, for procedures using the CyberKnife and TomoTherapy Systems;
- Development of new products and technologies by our competitors or new treatment alternatives;
- Regulatory developments related to manufacturing, marketing and selling the CyberKnife and TomoTherapy Systems both within and outside the United States;
- Perceived liability risks arising from the use of new products; and
- Unfavorable publicity concerning the CyberKnife or TomoTherapy Systems or radiation-based treatment alternatives.

If the CyberKnife or TomoTherapy Systems are unable to achieve or maintain market acceptance, new orders and sales of our systems would be adversely affected, our revenue levels would decrease and our business would be harmed.

If we are unable to develop new products or enhance existing products, we may be unable to attract or retain customers.

Our success depends on the successful development, regulatory clearance or approval, introduction and commercialization of new generations of products, treatment systems, and enhancements to and/or simplification of existing products. The CyberKnife and TomoTherapy Systems, which are currently our principal products, are technologically complex and must keep pace with, among other things, the products of our competitors. We are making significant investments in long-term growth initiatives. Such initiatives require significant capital commitments, involvement of senior management and other investments on our part, which we may be unable to recover. Our timeline for the development of new products or enhancements may not be achieved and price and profitability targets may not prove feasible. Commercialization of new products may prove challenging, and we may be required to invest more time and money than expected to successfully introduce them. Once introduced, new products may adversely impact orders and sales of our existing products, or make them less desirable or even obsolete. Compliance with regulations, competitive alternatives, and shifting market preferences may also impact the successful implementation of new products or enhancements.

Our ability to successfully develop and introduce new products, treatment systems and product enhancements and simplifications, and the revenues and costs associated with these efforts, are affected by our ability to:

- Properly identify customer needs;
- Prove feasibility of new products;

Table of Contents

- Educate physicians about the use of new products and procedures;
- Limit the time required from proof of feasibility to routine production;
- Comply with internal quality assurance systems and processes timely and efficiently;
- Limit the timing and cost of obtaining regulatory approvals or clearances;
- Accurately predict and control costs associated with inventory overruns caused by phase-in of new products and phase-out of old products;
- Price our products competitively;
- Manufacture and deliver our products in sufficient volumes on time, and accurately predict and control costs associated with manufacturing, installation, warranty and maintenance of the products;

- Manage customer acceptance and payment for products;
- Manage customer demands for retrofits of both old and new products; and
- Anticipate and compete successfully with competitors.

Even if customers accept new products or product enhancements, the revenues from these products may not be sufficient to offset the significant costs associated with making them available to customers.

We cannot be sure that we will be able to successfully develop, obtain regulatory approval or clearance for, manufacture or introduce new products, treatment systems or enhancements, the roll-out of which involves compliance with complex quality assurance processes, including the quality system regulation, or QSR, enforced by the FDA. Failure to obtain regulatory approval or clearance for our products or to complete these processes in a timely and efficient manner could result in delays that could affect our ability to attract and retain customers, or could cause customers to delay or cancel orders, causing our backlog, revenues and operating results to suffer.

Siemens AG and Accuray have not made material progress under the sales and R&D collaboration opportunities outlined in the Strategic Alliance Agreement signed in June 2010 and may not make further progress in the future.

In June 2010, we entered into a Strategic Alliance Agreement with Siemens AG, or the Alliance Agreement, pursuant to which (1) we granted Siemens certain distribution rights to our CyberKnife Systems, (2) Siemens agreed to incorporate certain Accuray technology into certain of its linac products, the combined products being known as the Cayman Products, and (3) we created a research and development relationship between Accuray and Siemens for the pursuit and implementation of other potential collaboration opportunities in the future. Siemens' right to distribute the CyberKnife System under the Alliance Agreement remains unchanged, though sales activity to date under the Agreement has not been material. We believe that as a result of our acquisition of TomoTherapy, the elements of the Alliance Agreement described in clauses (2) and (3) above are unlikely to develop further. Under the Alliance Agreement, both Siemens and the Company had the right to terminate the Alliance Agreement on written notice within 60 days following the acquisition of or by either party by specified competitors. On August 3, 2011, we entered into an Amendment to the Alliance Agreement with Siemens, which provides that each of the Company's and Siemens' right to terminate the Alliance Agreement as a result of the acquisition of TomoTherapy by the Company is extended until December 31, 2011 in order to allow the Company and Siemens to evaluate the impact of the TomoTherapy acquisition on the arrangements created by the Alliance Agreement.

There can be no assurance that the strategic alliance with Siemens AG will be successful or that the economic terms of the Alliance Agreement will ultimately prove to be favorable to us or that Siemens will not terminate the Alliance Agreement as a result of the Company's acquisition of TomoTherapy. We are not able to control the amount and timing of resources that Siemens will devote to the development, sales or marketing of the Cayman Products, the distribution of CyberKnife Systems, or to future collaboration opportunities. Our own business may be disrupted, and we may have to divert attention from our other research and development activities, in order to satisfy our obligations under the Alliance Agreement. We may incur costs in excess of the consideration to be paid to us by Siemens. Even if Siemens and the Company successfully complete development of a product, it may not receive the regulatory approvals necessary to be marketed and sold. Failure to successfully develop, market and sell the product, failure of Siemens to distribute the CyberKnife System, and the failure of us and Siemens to successfully collaborate on future opportunities could negatively impact our stock price and our future business and financial results.

Table of Contents

If we are not able to meet the requirements of our license agreement with the Wisconsin Alumni Research Foundation (WARF) we could lose access to the technologies licensed thereunder and be unable to manufacture, market or sell the TomoTherapy Systems.

We license patents from WARF covering the multi-leaf collimator and other key technologies incorporated into the TomoTherapy Systems under a license agreement that requires us to pay royalties to WARF. In addition, the license agreement obligates us to pursue an agreed development plan and to submit periodic reports, and restricts our ability to take actions to defend the licensed patents. WARF has the right to unilaterally terminate the agreement if we do not meet certain minimum royalty obligations or satisfy other obligations related to our utilization of the technology. If WARF were to terminate the agreement or if we were to otherwise lose the ability to exploit the licensed patents, our competitive advantage would be reduced and we may not be able to find a source to replace the licensed technology. The license agreement reserves to WARF the initial right to defend or prosecute any claim arising with respect to the licensed technology. If WARF does not vigorously defend the patents, we may be required to engage in expensive patent litigation to enforce our rights, and any competitive advantage we have based on the licensed technology may be hampered. Any of these events could adversely affect our business, financial condition and results of operations.

We may not be able to realize all of the desired benefits from our relationship with Compact Particle Acceleration Corporation ("CPAC").

Since April 2008, TomoTherapy has been an investor in CPAC to continue development of its research initiative for a compact proton therapy system for the treatment of cancer. CPAC has and is continuing to seek investments from third parties to support the development of this technology. Through TomoTherapy we currently have the option to purchase a portion of the CPAC stock held by CPAC investors in exchange for the right to commercialize the technology in the medical field, and we have the right to exercise this option at any time through April 2015. We may not be able to obtain all of the potential benefits relating to CPAC that we may desire. In addition, CPAC needs additional funding to continue its development efforts. We cannot be certain that CPAC will be able to obtain all of the additional financing required for this project on commercially reasonable terms or that the technology development will be successful. Even if CPAC is able to obtain financing and the technology development is successful, CPAC may not have the resources to commercialize the compact proton system, the market requirements may change such that commercialization is no longer feasible, or we may not be in a position to finance the option to purchase a portion of the CPAC stock held by CPAC investors in exchange for the right to commercialize the technology in the medical field. Any of these events could adversely affect our business, financial condition and results of operations.

If we are unable to maintain existing research collaboration relationships, enter into new collaboration arrangements in the future or enter into license agreements with our collaborators and others, our ability to enhance our products may be adversely affected.

We have entered into a number of research collaboration arrangements with a range of hospitals, cancer treatment centers and academic institutions. These collaborations support our internal research and development capabilities and represent a key element of our ongoing research and development program. Our research collaboration partners may not fulfill all of their obligations under our arrangements with them. If our current research collaborations do not meet our research and development expectations, or if we are unable to enter into additional research collaborations in the future to replace unproductive collaborations or add new collaborations, our ability to enhance our products may be adversely affected. Our inability to successfully collaborate with third parties could increase our development costs, delay new or pending developments and limit the likelihood of successful enhancements to the CyberKnife or TomoTherapy Systems.

Our collaboration agreements generally provide that we either own, in the case of our own developments, have the right to use, in the case of joint developments, or have the right to license, in the case of developments by our collaborator, technology developed pursuant to a collaboration. We cannot provide any assurance that we will successfully enter into license agreements with any of our collaborators concerning technology that is jointly developed or developed by the collaborator, which may prevent us from using that technology. If we are unable to enter into exclusive license agreements with a collaborator over technology that is jointly developed with, or solely developed by, the collaborator, the collaborator may be able to use or license the technology to third parties. Furthermore, if we are unable to enter into license agreements with a collaborator for technology that is jointly developed with, or solely developed by, the collaborator, we may be unable to use that technology. In addition, if we are unable to agree with our collaborators concerning ownership or proper inventorship of technology developed under the collaboration agreement, we may be forced to engage in arbitration or litigation to determine the proper ownership or inventorship. Any of these events could adversely affect our business, financial condition and results of operations.

Disruption of critical information systems could harm our business and financial condition.

Information technology helps us operate efficiently, interface with customers, maintain financial accuracy and efficiency, and accurately produce our financial statements. We implemented and began use of a new Enterprise Resource Planning, or ERP system effective January 1, 2011. Our initial implementation covered the basic elements of our ERP system. We plan to implement

Table of Contents

additional capabilities in the future and are in the process of migrating processes and systems used by TomoTherapy to the processes and systems used with our new ERP system. If we do not allocate and effectively manage the resources necessary to build and sustain the proper technology infrastructure, or if we fail to smoothly manage the new ERP system or its integration with TomoTherapy's processes and systems, we could be subject to transaction errors, processing inefficiencies, the loss of customers, business disruptions, or the loss of or damage to intellectual property through security breach. If our data management systems do not effectively collect, store, process and report relevant data for the operation of our business, whether due to equipment malfunction or constraints, software deficiencies, computer viruses, security breaches, catastrophic events or human error, our ability to effectively plan, forecast and execute our business plan and comply with applicable laws and regulations will be impaired, perhaps materially. Any such impairment could materially and adversely affect our financial condition, results of operations, cash flows and the timeliness with which we internally and externally report our operating results. Likewise, data privacy breaches by employees and others with permitted access to our systems may pose a risk that sensitive data may be exposed to unauthorized person or to the public. There can be no assurance that any efforts we make to prevent against such privacy breaches will prevent breakdowns or breaches in our systems that could adversely affect our business.

If we are unable to provide the significant education and training required for the healthcare market to accept our products, our business will suffer.

In order to achieve market acceptance of the CyberKnife and TomoTherapy Systems, we often need to educate physicians about the use of stereotactic radiosurgery and radiation therapy, convince healthcare payers that the benefits of the CyberKnife and TomoTherapy Systems and their related treatment processes outweigh their costs and help train qualified physicians in the skilled use of these systems. For example, the complexity and dynamic nature of stereotactic radiosurgery and Robotic IMRT as well as adaptive radiation therapy and IGRT require significant education of hospital personnel and physicians regarding the benefits of stereotactic radiosurgery and Robotic IMRT as well as adaptive radiation therapy and IGRT and require departures from their customary practices. In addition, we also must educate clinicians regarding the entire functionality of our radiation therapy systems, including techniques using the full quantitative imaging capabilities of our treatment systems, which enable clinicians to adapt a patient's treatment plan in response to anatomical changes and the cumulative amount of radiation received by specific areas within the patient over the course of treatment. We have expended and will continue to expend significant resources on marketing and educational efforts to create awareness of stereotactic radiosurgery, Robotic IMRT as well as adaptive radiation therapy and IGRT and to encourage the acceptance and adoption of our products for these technologies. We cannot be sure that any products we develop will gain significant market acceptance among physicians, patients and healthcare payors, even if we spend significant time and expense on their education. Failure to gain significant market acceptance would adversely affect our product sales and revenues, harming our business, financial condition and results of operations.

We have a large accumulated deficit, may incur future losses and may be unable to achieve profitability.

As of September 30, 2011, we had an accumulated deficit of $170.9 million. We may incur net losses in the future, particularly as we increase our manufacturing, research and development, and marketing activities. Our ability to achieve and sustain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife and TomoTherapy Systems and to control our costs and effectively manage our growth. We cannot assure you that we will be able to achieve profitability. In the event we fail to achieve profitability, our stock price could decline.

Multiple factors may adversely affect our ability to fully utilize certain tax loss carryforwards.

As of June 30, 2011, we had approximately $116.1 million and $45.9 million in federal and state net operating loss carry forwards, respectively, which expire in varying amounts beginning in 2019 for federal and 2015 for state purposes. Included in the federal and state net operating loss carryforwards is $72.0 million of federal net operating loss carryforwards and $18.0 million of state net operating loss carryforwards from the acquisition of TomoTherapy. The federal and state net operating loss carryforwards will expire in varying amounts beginning in 2010 for federal purposes and 2015 for state purposes. In addition, as of June 30, 2011, we had federal and state research and development tax credits of approximately $7.6 million and $7.5 million, respectively. The federal research credits will begin to expire in 2025 and the California research credits have no expiration date. Utilization of our net operating loss and credit carry forwards is subject to annual limitation due to the ownership change limitations provided by Section 382 of the Internal Revenue Code and similar state provisions. However, none of Accuray and TomoTherapy's federal and state net operating loss carryforwards are expected to expire as a result of the ownership change limitation.

We face risks related to the current global economic environment, which could delay or prevent our customers from obtaining financing to purchase the CyberKnife and TomoTherapy Systems and implement the required facilities, which would adversely affect our business, financial condition and results of operations.

The state of the global economy continues to be somewhat uncertain. The current global economic conditions pose a risk that could impact consumer and customer demand for our products, as well as our ability to manage normal commercial

Table of Contents

relationships with our customers, suppliers and creditors, including financial institutions. If the current situation deteriorates or does not improve, our business could be negatively affected, including such areas as reduced demand for our products resulting from a slow-down in the general economy, supplier or customer disruptions and/or temporary interruptions in our ability to conduct day-to-day transactions through our financial intermediaries involving the payment to or collection of funds from our customers, vendors and suppliers.

In addition, due to uncertain credit markets and concerns regarding the availability of credit, particularly in the United States, some of our customers have been delayed in obtaining, or have not been able to obtain, necessary financing for their purchases of the CyberKnife or TomoTherapy Systems. In addition, some of our customers have been delayed in obtaining, or have not been able to obtain, necessary financing for the construction or renovation of facilities to house CyberKnife or TomoTherapy Systems, the cost of which typically range from approximately $0.35 million for a TomoTherapy System and $0.5 million for a CyberKnife System, for customers who make only minor renovations to existing facilities, to up to $2 million for a TomoTherapy System and $2.5 million for a CyberKnife System, for customers who build entirely new facilities that include additional features not necessarily required for the operation of a TomoTherapy or CyberKnife System (e.g., audio visual equipment). This range is based solely on information provided to us by customers and will vary by geography and the needs of a particular customer. To date, these delays have primarily affected customers that were planning to operate freestanding CyberKnife or TomoTherapy Systems centers, rather than hospital-based customers. These delays have in some instances led to our customers postponing the shipment and installation of previously ordered systems or cancelling their system orders, and may cause other customers to postpone their system installation or to cancel their agreements with us. An increase in delays and order cancellations of this nature would adversely affect our product sales, backlog and revenues, and therefore harm our business and results of operations.

The high unit price of the CyberKnife and TomoTherapy Systems, as well as other factors, may contribute to substantial fluctuations in our operating results, which could adversely affect our stock price.

Because of the high unit price of the CyberKnife and TomoTherapy Systems and the relatively small number of units installed each quarter, each installation of a CyberKnife or TomoTherapy System can represent a significant percentage of our revenue for a particular quarter. Therefore, if we do not install a CyberKnife or TomoTherapy System when anticipated, our operating results will vary significantly from our expectations. This is of particular concern in the current volatile economic environment, where we have had experiences with customers cancelling or postponing orders for our CyberKnife and TomoTherapy Systems and delaying any required build-outs. These fluctuations and other potential fluctuations mean that you should not rely upon our operating results in any particular period as an indication of future performance. In particular, in addition to the other risk factors described above and below, factors which may contribute to these fluctuations include:

- Timing of when we are able to recognize revenue associated with sales of the CyberKnife and TomoTherapy Systems, which varies depending upon the terms of the applicable sales and service contracts;
- The proportion of revenue attributable to purchases of the CyberKnife and TomoTherapy Systems which are associated with our shared ownership program and our legacy service plans;
- Timing and level of expenditures associated with new product development activities;
- Regulatory requirements in some states for a certificate of need prior to the installation of a radiation device;
- Delays in shipment due, for example, to unanticipated construction delays at customer locations where our products are to be installed, cancellations by customers, natural disasters or labor disturbances;
- Delays in our manufacturing processes or unexpected manufacturing difficulties;
- Timing of the announcement, introduction and delivery of new products or product upgrades by us and by our competitors;
- Timing and level of expenditures associated with expansion of sales and marketing activities such as trade shows and our overall operations;
- Fluctuations in our gross margins and the factors that contribute to such fluctuations, as described in the Management’s Discussion and Analysis of Financial Condition and Results of Operations;
- How well we execute on our strategic and operating plans;

Table of Contents

- The extent to which our products gain market acceptance;
- Actions relating to regulatory matters;
- Demand for our products;

- Our ability to develop, introduce and market new or enhanced versions of our products on a timely basis;
- Our ability to protect our proprietary rights and defend against third party challenges;
- Disruptions in the supply or changes in the costs of raw materials, labor, product components or transportation services; and
- Changes in third party coverage and reimbursement, changes in government regulation, or a change in a customer's financial condition or ability to obtain financing.

These factors are difficult to forecast and may contribute to substantial fluctuations in our quarterly revenues and substantial variation from our projections, particularly during the periods in which our sales volume is low. These fluctuations may cause volatility in our stock price.

Because the majority of our revenue is derived from sales of the CyberKnife and TomoTherapy Systems, and because we experience a long and variable sales and installation cycle, our quarterly results may be inconsistent from period to period. These fluctuations in revenue may make it difficult to predict our revenue.

Our primary products are the CyberKnife and TomoTherapy Systems. We expect to generate substantially all of our revenue for the foreseeable future from sales of and service contracts for the CyberKnife and TomoTherapy Systems. The CyberKnife and TomoTherapy Systems have lengthy sales and purchase order cycles because they are major capital equipment items and require the approval of senior management at purchasing institutions. Selling our systems, from first contact with a potential customer to a complete order, generally spans six months to two years and involves personnel with multiple skills. The sales process in the United States typically begins with pre-selling activity followed by sales presentations and other sales-related activities. After the customer has expressed an intention to purchase a CyberKnife or TomoTherapy Systems, we negotiate and enter into a definitive purchase contract with the customer. Typically, following the execution of the contract, the customer begins the building or renovation of a facility to house the CyberKnife or TomoTherapy System, which together with the subsequent installation of the CyberKnife or TomoTherapy System, can take up to 24 months to complete. During the period prior to installation, the customer must build a radiation-shielded facility to house its CyberKnife or TomoTherapy System. In order to construct this facility, the customer must typically obtain radiation device installation permits, which are granted by state and local government bodies, each of which may have different criteria for permit issuance. If a permit were denied for installation at a specific hospital or treatment center, our CyberKnife or TomoTherapy System could not be installed at that location. In addition, some of our customers are cancer centers or facilities that are new, and in these cases it may be necessary for the entire facility to be completed before the CyberKnife or TomoTherapy System can be installed, which can result in additional construction and installation delays. Our sales and installations of CyberKnife and TomoTherapy Systems tend to be heaviest during the third month of each fiscal quarter.

Under our revenue recognition policy, we generally do not recognize revenue attributable to a CyberKnife or TomoTherapy System purchase until after installation has occurred, if we are responsible for providing installation, or delivery. For international sales through distributors, we typically recognize revenue when the system is shipped with evidence of sell through to the end user. Under our current forms of purchase and service contracts, we record a majority of the purchase price as revenue for a CyberKnife or TomoTherapy System upon installation or delivery of the system. Events beyond our control may delay installation and the satisfaction of contingencies required to receive cash inflows and recognize revenue, such as:

- Procurement delay;
- Customer funding or financing delay;
- Delay in or unforeseen difficulties related to customers organizing legal entities and obtaining financing for CyberKnife or TomoTherapy System acquisition;
- Construction delay;

Table of Contents

- Delay pending customer receipt of regulatory approvals, including, for example, certificates of need;
- Delay pending customer receipt of a building or radiation device installation permit; and
- Delay caused by weather or natural disaster.

In the event that a customer does not, for any of the reasons above or other reasons, proceed with installation of a system after entering into a purchase contract, we would only recognize up to the deposit portion of the purchase price as revenue, unless the deposit was refunded to the customer. Therefore, the long sales cycle together with delays in the shipment and installation of CyberKnife and TomoTherapy Systems or customer cancellations would adversely affect our cash flows and revenue, which would harm our results of operations and may result in significant fluctuations in our reporting of quarterly revenues. Because of these fluctuations, it is likely that in some future quarters, our operating results will fall below the expectations of securities analysts or investors. If that happens, the market price of our stock would likely decrease. These fluctuations also mean that you will not be able to rely upon our operating results in any particular period as an indication of future performance.

Our ability to achieve profitability depends in part on maintaining or increasing our gross margins on product sales and service, which we may not be able to achieve.

A number of factors may result in adverse impacts to our gross margins, including:

- Actions related to new products, pricing and marketing programs;
- The timing of revenue recognition and revenue deferrals;
- Sales discounts;

- Changes in product configurations;
- Increases in material or labor costs;
- Increased service or warranty costs or the failure to reduce service or warranty costs, especially with respect to the TomoTherapy Systems;
- Excess inventory and inventory holding charges;
- Obsolescence charges;
- Our ability to reduce production costs;
- Increased price competition;
- Variation in the margins across products installed in a particular period; and
- How well we execute on our strategic and operating plans.

We may not be able to achieve profitability with respect to our service business relating to TomoTherapy Systems.

Our overall service operations relating to TomoTherapy Systems currently are not profitable. Our ability to increase the profitability of this service business depends in part on reducing warranty and service costs for the TomoTherapy Systems and improving economies of scale in service operations. We may be unable to achieve these reductions in costs or improve the reliability of the TomoTherapy Systems during the time period expected or at all, and this could adversely affect our results of operations.

If third-party payors do not provide sufficient coverage and reimbursement to healthcare providers for use of the CyberKnife and TomoTherapy Systems, demand for our products and our revenue could be adversely affected.

Our customers rely significantly on reimbursement for CyberKnife and TomoTherapy procedures. Our ability to commercialize our products successfully will depend in significant part on the extent to which public and private third-party payors

Table of Contents

provide adequate coverage and reimbursement for procedures that are performed with our products. Third-party payors, and in particular managed care organizations, challenge the prices charged for medical products and services and institute cost containment measures to control or significantly influence the purchase of medical products and services. If reimbursement policies or other cost containment measures are instituted in a manner that significantly reduces the coverage for or payment for our procedures that are performed with our products, our existing customers may not continue using our products or may decrease their use of our products, and we may have difficulty obtaining new customers. Such actions would likely have a material adverse effect on our operating results. In November 2011, the centers for Medicare and Medicaid Services, or CMS, issued the 2012 Medicare payment rates. While certain of the reimbursement rates are modestly higher than in the prior year, others are modestly lower than in the prior year, which could have a negative impact on the continued use of our products by existing customers and our ability to obtain new customers. CMS reviews such rates annually, and could implement more significant changes in future years. If in the future CMS significantly decreases reimbursement rates for stereotactic radiosurgery, Robotic IMRT or radiation therapy services, or if other cost containment measures are implemented in the United States or elsewhere, such changes could discourage cancer treatment centers and hospitals from purchasing our products. We have seen our customers' decision making process complicated by the uncertainty surrounding the proposed reduction in Medicare reimbursement rates for radiotherapy and radiosurgery at freestanding clinics in the United States and for physician reimbursement for radiation oncology, which has resulted in delay and sometimes even failure to purchase our products.

We rely on a third party to perform spare parts shipping and other logistics functions on our behalf. A failure or disruption at our logistics provider would adversely impact our business.

Customer service is a critical element of our sales strategy. As of September 30, 2011, third-party logistics providers stored most of our spare parts inventory in depots around the world and performed a significant portion of our spare parts logistics and shipping activities. If any of our logistics providers suffers an interruption in its business, or experiences delays, disruptions or quality control problems in its operations, or we have to change and qualify alternative logistics providers for our spare parts, shipments of spare parts to our customers may be delayed and our reputation, business, financial condition and results of operations may be adversely affected.

Our industry is subject to intense competition and rapid technological change, which may result in products or new tumor treatments that are superior to the CyberKnife and TomoTherapy Systems. If we are unable to anticipate or keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our products may become less useful or obsolete and our operating results will suffer.

The medical device industry in general and the non-invasive cancer treatment field in particular are subject to intense and increasing competition and rapidly evolving technologies. Because our products often have long development and government approval cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to continue to demonstrate the advantages of our products and technologies over well-established alternative procedures, products and technologies, and convince physicians and other healthcare decision makers of the advantages of our products and technologies. Traditional surgery and other forms of minimally invasive procedures, brachytherapy, chemotherapy or other drugs remain alternatives to the CyberKnife and TomoTherapy Systems.

We consider the competition for the TomoTherapy Systems to be existing radiation therapy systems, primarily using C-arm linacs, sold by large, well-capitalized companies with significantly greater market share and resources than we have. Several of these competitors are also able to leverage their fixed sales, service and other costs over multiple products or product lines. In particular, we compete with a number of existing radiation therapy equipment companies including Varian Medical Systems, Inc., Elekta AB, Siemens Medical Solutions, Mitsubishi Heavy Industries, and to a lesser extent, BrainLAB AG. Varian Medical Systems has been the leader in the external beam radiation therapy market for many years and has the majority market share for radiation

therapy systems worldwide. In 2008, Varian began selling and installing RapidArc technology. The RapidArc technology purports to be able to deliver image-guided, intensity-modulated radiation therapy more rapidly than other similar systems, including the TomoTherapy Systems, and Varian has maintained a strong marketing campaign claiming this technology has the same capabilities as, or better capabilities than, our TomoTherapy Systems. In April, 2010, Varian announced the launch of a new line of TrueBeam systems, which Varian claims are specifically designed for high-precision image-guided radiotherapy and radiosurgery. Varian claims this new platform is designed to be versatile and can be used for all forms of advanced external beam radiation therapy.

The CyberKnife System also competes directly with conventional linac based radiation therapy systems primarily from Elekta AB, BrainLAB AG, Mitsubishi Heavy Industries and Varian Medical Systems. At least one other company has announced that it is developing a product that, if introduced, would be directly competitive with the CyberKnife. In general, because of aging demographics and attractive market factors in oncology, we believe that new competitors will enter the radiosurgery and radiation therapy markets in the years ahead. The CyberKnife System has not typically been used to perform traditional radiation therapy and

Table of Contents

therefore competition has been limited with conventional medical linacs that perform traditional radiation therapy. However, the CyberKnife VSI System, which we introduced in November of 2009, may be used to perform Robotic IMRT, an advanced method of traditional radiation therapy, which products of Elekta, Siemens and Varian are also capable of performing. In addition, some manufacturers of conventional linac based radiation therapy systems, including Varian and Elekta, have products that can be used in combination with body and/or head frames and image-guidance systems to perform radiosurgery.

Furthermore, many government, academic and business entities are investing substantial resources in research and development of cancer treatments, including surgical approaches, radiation treatment, MRI-guided radiotherapy systems, proton therapy systems, drug treatment, gene therapy, which is the treatment of disease by replacing, manipulating, or supplementing nonfunctional genes, and other approaches. Moreover, at least one other company has announced that it is developing a product that, if introduced, would be directly competitive with the CyberKnife System. Successful developments that result in new approaches for the treatment of cancer could reduce the attractiveness of our products or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render the CyberKnife and TomoTherapy Systems and their technologies obsolete. Many of our competitors have or may have greater corporate, financial, operational, sales and marketing resources, and more experience and resources in research and development than we have. We cannot assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on:

- Widespread awareness, acceptance and adoption by the radiation oncology and cancer therapy markets of our products;
- The development of new technologies that improve the effectiveness and productivity of the CyberKnife System radiosurgery process and the TomoTherapy System radiation therapy process;
- Product and procedure coverage and reimbursement from third-party payors, insurance companies and others;
- Availability of coverage and reimbursement from third-party payors, insurance companies and others for procedures performed using our systems;
- Properly identifying customer needs and delivering new products or product enhancements to address those needs;
- Published studies supporting the efficacy and safety and long-term clinical benefit of the CyberKnife and TomoTherapy Systems;
- Limiting the time required from proof of feasibility to routine production;
- Limiting the timing and cost of obtaining regulatory approvals or clearances;
- The manufacture and delivery of our products in sufficient volumes on time, and accurately predicting and controlling costs associated with manufacturing, installation, warranty and maintenance of the products;
- Our ability to attract and retain qualified personnel;
- The extent of our intellectual property protection or our ability to otherwise develop proprietary products and processes;
- Securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts; and
- Obtaining any necessary United States or foreign marketing approvals or clearances.

If customers choose not to purchase a CyberKnife or TomoTherapy System or choose to purchase our competitors' products, our revenue and market share would be adversely impacted, and there could be a material adverse effect on our business, financial condition and results of operations. In addition, companies in the pharmaceutical or biotechnology fields may seek to

Table of Contents

develop methods of cancer treatment that are more effective than radiation therapy and radiosurgery, resulting in decreased demand for the TomoTherapy or CyberKnife Systems. Because the CyberKnife and TomoTherapy Systems have a long development cycle and because it can take significant time to receive government approvals or clearances for changes to the CyberKnife and TomoTherapy Systems, we must anticipate changes in the marketplace and the direction of technological innovation. Accordingly, if we are unable to anticipate and keep pace with new innovations in the cancer treatment market, the CyberKnife or TomoTherapy Systems or an aspect of their functionality may be rendered obsolete, which would have a material adverse effect on our business, financial condition and results of operations. In addition, some of our competitors may compete by changing their pricing model or by lowering the price of their conventional radiation therapy systems or ancillary supplies. If such pricing strategies are implemented, there could be downward pressure on the price of radiation therapy and radiosurgery systems. If we are unable to maintain or increase our selling prices, our gross margins will decline, and there could be a material adverse effect on our business, financial condition and results of operations.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results. As a result, current and potential stockholders could lose confidence in our financial reporting, which could have an adverse effect on our business and our stock price.

Effective internal controls are necessary for us to provide reliable financial reports and to protect from fraudulent, illegal or unauthorized transactions. If we cannot provide effective controls and reliable financial reports, our business and operating results could be harmed. Our management determined, as of June 30, 2011 and September 30, 2011, that we had a material weakness in our internal control over financial reporting and that our disclosure controls and procedures were not effective. We began our remediation efforts during the first quarter of fiscal 2012 which include (1) actively recruiting for several positions within the finance function, which will provide us with the appropriate resources and technical skills to ensure that the period-end financial close and reporting processes are completed in an adequate and reliable manner and (2) implemented a practice, pursuant to which we consulted with, and will continue to consult with external subject matter experts as necessary to address any significant, non-routine transactions that may arise in order to validate the accounting approach prior to execution.

A failure to implement and maintain effective internal control over financial reporting, including a failure to implement corrective actions to address the control deficiencies identified above, could result in a material misstatement of our financial statements or otherwise cause us to fail to meet our financial reporting obligations. This, in turn, could result in a loss of investor confidence in the accuracy and completeness of our financial reports, which could have an adverse effect on our business and operating results and our stock price, and we could be subject to stockholder litigation. In addition, remedying this material weakness may require significant additional financial and managerial resources.

We may have difficulties in determining the effectiveness of our internal control due to our complex financial model.

The complexity of our financial model contributes to our need for effective financial reporting systems and internal controls. We recognize revenue from a range of transactions including CyberKnife and TomoTherapy System sales, our shared ownership program and services. The CyberKnife and TomoTherapy Systems are complex products that contain both hardware and software elements. The complexity of the CyberKnife and TomoTherapy Systems and of our financial model pertaining to revenue recognition requires us to process a broader range of financial transactions than would be required by a company with a less complex financial model. Accordingly, deficiencies or weaknesses in our internal controls would likely impact us more significantly than they would impact a company with a less complex financial model. If we were to find that our internal controls were deficient, we could be required to amend or restate historical or pro forma financial statements, which would likely have a negative impact on our stock price. Our management determined, as of June 30, 2011 and September 30, 2011, that we had a material weakness in our internal control over financial reporting and that our disclosure controls and procedures were not effective. We began our remediation efforts during the first quarter of fiscal 2012.

Our reliance on single source suppliers for critical components of the CyberKnife and TomoTherapy Systems could harm our ability to meet demand for our products in a timely and cost effective manner.

We currently depend on single source suppliers for some of the critical components necessary for the assembly of the CyberKnife and TomoTherapy System, including, with respect to the CyberKnife System, the robotic manipulator, imaging plates, treatment table, robotic couch and magnetron, which creates the microwaves for use in the linac, and, with respect to the TomoTherapy Systems, the ring gantry, the solid state modulator, the radiation detector and the magnetron. If any single source suppliers were to cease delivering components to us or fail to provide the components to our specifications and on a timely basis, we might be required to find alternative sources for these components. We may have difficulty or be unable to find alternative sources for these components. As a result, we may be unable to meet the demand for the CyberKnife or TomoTherapy Systems, which could harm our ability to generate revenue and damage our reputation. Even if we do find alternate suppliers, we will be required to qualify any such alternate suppliers and we would likely experience a lengthy delay in our manufacturing processes or a

Table of Contents

cessation in production, which would result in delays of shipment to end users. We cannot assure you that our single source suppliers will be able or willing to meet our future demands.

We generally do not maintain large volumes of inventory, which makes us even more susceptible to harm if a single source supplier fails to deliver components on a timely basis. Furthermore, if we are required to change the manufacturer of a critical component of the CyberKnife or TomoTherapy Systems, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements. We also will be required to assess the new manufacturer's compliance with all applicable regulations and guidelines, which could further impede our ability to manufacture our products in a timely manner. If the change in manufacturer results in a significant change to the product, a new 510(k) clearance would be necessary, which would likely cause substantial delays. The disruption or termination of the supply of key components for the CyberKnife or TomoTherapy Systems could harm our ability to manufacture our products in a timely manner or within budget, harm our ability to generate revenue, lead to customer dissatisfaction and damage our reputation.

It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in our products. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges. As key patents expire, our ability to prevent competitors from copying our technology may be limited.

In addition to patents, we rely on a combination of trade secrets, copyright and trademark laws, nondisclosure agreements and other contractual provisions and technical security measures to protect our intellectual property rights. These measures may not be adequate to safeguard the technology underlying our products. If these measures do not protect our rights adequately, third parties could use our technology, and our ability to compete in the market would be reduced. Although we have attempted to obtain patent coverage for our technology where available and appropriate, there are aspects of the technology for which patent coverage was never sought or never received. There are also countries in which we sell or intend to sell the CyberKnife or TomoTherapy Systems but have no patents or pending patent applications. Our ability to prevent others from making or selling duplicate or similar technologies will be impaired in those countries in which we have no patent protection. Although we have several issued patents in the United States and in foreign countries protecting aspects of the CyberKnife and TomoTherapy Systems, our pending United States and foreign patent applications may not issue, may issue only with limited coverage or may issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, our issued patents and those of our licensors may not provide us with any competitive advantages. Competitors may be able to design around our patents or develop products which provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges by third parties, and others may challenge the inventorship or ownership of our patents and pending patent applications. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property rights or to defend our patents against challenge could be expensive and time consuming and could divert our management's attention from our core business. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge. In addition, we may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially valuable. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, we may provoke third parties to assert claims against us.

We also license patent and other proprietary rights to aspects of our technology to third parties in fields where we currently do not operate as well as in fields where we currently do operate. Disputes with our licensees may arise regarding the scope and content of these licenses. Further, our ability to expand into additional fields with our technologies may be restricted by our existing licenses or licenses we may grant to third parties in the future.

In October 2006, January 2007 and February 2007, we received correspondence from American Science and Engineering, Inc., or AS&E, expressing concerns that we may be using certain intellectual property we acquired from AS&E through the HES acquisition in a manner that breaches, or may breach, our contractual obligations under a license agreement with them in certain non-medical fields. The intellectual property at issue relates to the development of a next-generation linac that could be used for medical as well as non-medical purposes. We are developing the technology used in the next-generation linac independently from the intellectual property we obtained from the HES acquisition. In January of 2010, we entered into a Supply Agreement with AS&E, pursuant to which AS&E has acknowledged and agreed that our use of the intellectual property at issue did not breach or contravene the license agreement.

Table of Contents

The policies we have in place to protect our trade secrets may not be effective in preventing misappropriation of our trade secrets by others. In addition, confidentiality agreements executed by our employees, consultants and advisors may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. Litigating a trade secret claim is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge methods and know-how. If we are unable to protect our intellectual property rights, we may be unable to prevent competitors from using our own inventions and intellectual property to compete against us, and our business may be harmed.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the medical device industry, we employ individuals who were previously employed at other medical equipment or biotechnology companies, including our competitors or potential competitors. We may be subject to claims that we or these employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend or against these claims. For example, on September 3, 2009, Best Medical filed a lawsuit against us in the U.S. District Court for the Western District of Pennsylvania, claiming we induced certain individuals to leave the employment of Best Medical and join our company in order to gain access to Best Medical's confidential information and trade secrets. Best Medical is seeking monetary damages and other relief. We filed a motion for summary judgment on May 20, 2011, Best Medical filed its response on June 21, 2011, and we filed a response to their response on July 8, 2011. On October 25, 2011, the court granted summary judgment in our favor on all counts. If Best Medical wishes to appeal the judgment, it must file its notice of appeal on or before November 25, 2011. We are now awaiting a ruling by the court. Best Medical is seeking monetary damages and other relief. Even if we are successful in defending against claims of this nature, litigation could result in substantial costs and be a distraction to management.

Third parties may claim we are infringing their intellectual property, and we could suffer significant litigation or licensing expenses or be prevented from selling our product.

The medical device industry is characterized by a substantial amount of litigation over patent and other intellectual property rights. In particular, the field of radiation treatment of cancer is well established and crowded with the intellectual property of competitors and others. We also expect that other participants will enter the field. A number of companies in our market, as well as universities and research institutions, have issued patents and have filed patent applications which relate to the use of radiation therapy and stereotactic radiosurgery to treat cancerous and benign tumors.

Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. We have not conducted an extensive search of patents issued to third parties, and no assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields, our competitors or other third parties may assert that our products and the methods we employ in the use of our products are covered by United States or foreign patents held by them. For example, on August 6, 2010, Best Medical International, Inc., or Best Medical, filed a lawsuit against Accuray in the U.S. District court for the Western District of Pennsylvania, claiming Accuray has infringed U.S. Patent No. 5,596,619, a patent that Best Medical alleges protects a method and apparatus for conformal radiation therapy, and on December 16, 2010, Best Medical filed an amended complaint, claiming that the Company also infringes U.S. Patent Nos. 6,038,283 and 7,266,175, both of which Best Medical alleges cover methods and apparatus for conformal radiation therapy. On March 9, 2011, the Court dismissed with prejudice all counts against the Company, except for two counts of alleged willful infringement of two of the patents. The Court issued a Scheduling Order on May 12, 2011

appointing a special master for claim construction, and setting a claim construction hearing on January 10, 2012. Best Medical moved to voluntarily dismiss one of the two remaining patents on June 28, 2011, which the court granted on June 30, 2011, leaving only one patent at issue in the case. On September 1, 2011, the Court modified its Scheduling Order, setting a claim construction hearing on January 24-25, 2012. Best Medical is seeking declaratory and injunctive relief as well as unspecified compensatory and treble damages and other relief.

In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware, and which may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our products or parts may infringe and of which we are unaware. As the number of competitors in the market for less invasive cancer treatment alternatives grows, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Regardless of the merit of infringement claims, they can be time-consuming, result in costly litigation and diversion of technical and management personnel. Some of our

Table of Contents

competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

In the event that we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property were upheld as valid and enforceable and we were found to infringe or violate the terms of a license to which we are a party, we could be prevented from selling our products unless we could obtain a license or were able to redesign the product to avoid infringement. Required licenses may not be made available to us on acceptable terms or at all. If we were unable to obtain a license or successfully redesign our system, we might be prevented from selling our system. If there is an allegation or determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, or a settlement or ongoing royalties. In these circumstances, we may be unable to sell our products at competitive prices or at all, our business and operating results could be harmed.

We could become subject to product liability claims, product recalls, other field actions and warranty claims that could be expensive, divert management's attention and harm our business.

Our business exposes us to potential liability risks that are inherent in the manufacturing, marketing and sale of medical device products. We may be held liable if a CyberKnife or TomoTherapy System causes injury or death or is found otherwise unsuitable during usage. Our products incorporate sophisticated components and computer software. Complex software can contain errors, particularly when first introduced. In addition, new products or enhancements may contain undetected errors or performance problems that, despite testing, are discovered only after installation. Because our products are designed to be used to perform complex surgical and therapeutic procedures involving delivery of radiation to the body, defects, even if small, could result in a number of complications, some of which could be serious and could harm or kill patients. Any weaknesses in training and services associated with our products may also be subject to product liability lawsuits. It is also possible that defects in the design, manufacture or labeling of our products might necessitate a product recall or other field corrective action, which may result in warranty claims beyond our expectations and may harm our reputation and create bad publicity. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. We may also be subject to claims for property damage or economic loss related to, or resulting from, any errors or defects in our products, or the installation, servicing and support of our products, or any professional services rendered in conjunction with our products. The coverage limits of our insurance policies may not be adequate to cover future claims. If sales of our products increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or other field actions or excessive warranty claims, whether arising from defects in design or manufacture or labeling, could negatively affect our sales or require a change in the design, manufacturing process or the indications for which the CyberKnife or TomoTherapy Systems may be used, any of which could harm our reputation and business and result in a decline in revenue.

In addition, if a product we designed or manufactured is defective, whether due to design or manufacturing, or labeling defects, improper use of the product or other reasons, we may be required to notify regulatory authorities and/or to recall the product, possibly at our expense. We have voluntarily conducted recalls and product corrections in the past, including two such recalls for the CyberKnife Systems, and two such recalls for the TomoTherapy Systems, during the three months ended September 30, 2011. Each of these recalls was initiated by Accuray. No serious adverse health consequences have been reported in connection with these recalls, and the costs associated with each such recall were not material. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities of our products, which could in turn result in required recalls, restrictions on the sale of the products or other civil or criminal penalties. The adverse publicity resulting from any of these actions could cause customers to review and potentially terminate their relationships with us. These investigations or recalls, especially if accompanied by unfavorable publicity or termination of customer contracts, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

The safety and efficacy of our products for certain uses is not yet supported by long-term clinical data, and our products may therefore prove to be less safe and effective than initially thought.

Although we believe that the CyberKnife and TomoTherapy Systems have advantages over competing products and technologies, we do not have sufficient clinical data demonstrating these advantages for all tumor indications. For example, because our CyberKnife procedures are relatively new, we have limited clinical data relating to the effectiveness of the CyberKnife System as a means of controlling the growth of cancer at a particular body site. In addition, we have only limited five-year patient survival rate data, which is a common long-term measure of clinical effectiveness in cancer treatment. Further, future patient studies or clinical experience may indicate that treatment with the CyberKnife System does not improve patient survival or outcomes.

Table of Contents

Likewise, because the TomoTherapy System has only been on the market since 2003, we have limited complication or patient survival rate data with respect to treatment using the system. In addition, while the effectiveness of radiation therapy is well understood, there is a growing but still limited number

of peer-reviewed medical journal publications regarding the efficacy of highly conformal treatment such as that delivered by the TomoTherapy System. If future patient studies or clinical experience do not support our beliefs that the TomoTherapy System offers a more advantageous treatment for a wide variety of cancer types, use of the system could fail to increase or could decrease, and our business would therefore be adversely affected.

Such results could slow the adoption of our products by physicians, significantly reduce our ability to achieve expected revenues and could prevent us from becoming profitable. In addition, if future results and experience indicate that our products cause unexpected or serious complications or other unforeseen negative effects, the FDA could rescind our clearances, our reputation with physicians, patients and others may suffer and we could be subject to significant legal liability.

The CyberKnife Systems have been in use for a limited period of time for uses outside the brain, and the medical community has not yet developed a large quantity of peer-reviewed literature that supports safe and effective use in those locations in the body.

The CyberKnife System was initially cleared by a number of regulatory authorities for the treatment of tumors in the brain and neck. More recently, the CyberKnife Systems have been cleared in the United States to treat tumors anywhere in the body where radiation is indicated, and our future growth is dependent in large part on continued growth in full body use of the system. Currently, however, there are a limited number of peer-reviewed medical journal publications regarding the safety and efficacy of the CyberKnife System for treatment of tumors outside the brain or spine. If later studies show that the CyberKnife Systems are less effective or less safe with respect to particular types of solid tumors, or in the event clinical studies do not achieve the results anticipated at the outset of the study, use of the CyberKnife System could fail to increase or could decrease and our growth and operating results would therefore be harmed.

Any failure in our physician training efforts could result in potential liabilities.

We rely on physicians to devote adequate time to learn to use our products. If physicians are not properly trained, they may misuse or ineffectively use our products. This may result in unsatisfactory patient outcomes, patient injury and related liability or negative publicity which could have an adverse effect on our product sales.

International sales of our products account for a significant portion of our revenue, which exposes us to risks inherent in international operations.

Our international sales have increased over the last four fiscal years. The percentage of our revenue derived from sales outside of the United States for the three months ended September 30, 2011 and 2010 was 51% and 39%, respectively. To accommodate our international sales, we have invested significant financial and management resources to develop an international infrastructure that will meet the needs of our customers. We anticipate that a significant portion of our revenue will continue to be derived from sales of our products in foreign markets and that the percentage of our overall revenue that is derived from these markets may continue to increase. This revenue and related operations will therefore continue to be subject to the risks associated with international operations, including:

- Economic or political instability;
- Shipping delays;
- Changes in foreign regulatory laws governing, among other matters, the clearance, approval and sales of medical devices;
- The potential failure to comply with foreign regulatory requirements to market our products on a timely basis or at all;
- Difficulties in enforcing agreements with and collecting receivables from customers outside the United States;
- Longer payment cycles associated with many customers outside the United States;
- Adequate coverage and reimbursement for the CyberKnife and TomoTherapy treatment procedures outside the United States;
- Failure of local laws to provide the same degree of protection against infringement of our intellectual property;
- Protectionist laws and business practices that favor local competitors;
- The possibility that foreign countries may impose additional taxes, tariffs or other restrictions on foreign trade;
- Failure of Accuray employees or distributors to comply with export laws and requirements which may result in civil or criminal penalties and restrictions on our ability to export our products;

Table of Contents

- The expense and difficulty of establishing and managing facilities and operations in foreign markets;
- Building an organization capable of supporting geographically dispersed operations;
- Risks relating to foreign currency, including fluctuations in foreign currency exchange rates; and
- Contractual provisions governed by foreign laws and various trade restrictions, including U.S. prohibitions and restrictions on exports of certain products and technologies to certain nations.

Our inability to overcome these obstacles could harm our business, financial condition and operating results. Even if we are successful in managing these obstacles, our partners internationally are subject to these same risks and may not be able to manage these obstacles effectively.

Our international operations are also subject to laws regarding the conduct of business overseas, such as the U.S. Foreign Corrupt Practices Act, or FCPA, and the recently adopted U.K. Bribery Act of 2010. The FCPA prohibits the provision of illegal or improper inducements to foreign government officials in connection with the obtaining of business overseas. Violations of the FCPA or other similar laws by us or any of our employees, executive officers, distributors or other agents could subject us or the individuals involved to criminal or civil liability and could therefore materially harm our business.

In addition, future imposition of, or significant increases in, the level of customs duties, export quotas, regulatory restrictions or trade restrictions could materially harm our business.

Our results may be impacted by changes in foreign currency exchange rates.

Currently, the majority of our international sales are denominated in U.S. dollars. As a result, an increase in the value of the U.S. dollar relative to foreign currencies could require us to reduce our sales price or make our products less competitive in international markets. Also, if our international sales increase, we may enter into a greater number of transactions denominated in non-U.S. dollars, which would expose us to foreign currency risks, including changes in currency exchange rates. If we are unable to address these risks and challenges effectively, our international operations may not be successful and our business would be materially harmed.

We depend on third-party distributors to market and distribute our products in international markets. If our distributors fail to successfully market and distribute our products, our business will be materially harmed.

We depend on a limited number of distributors in our international markets. We have maintained both the distributors we had prior to the acquisition of TomoTherapy as well as TomoTherapy's distributors, as product-specific distributors of our systems. We are evaluating whether to consolidate distribution channels in the jurisdictions in which we have multiple distributors. We cannot control the efforts and resources our third-party distributors will devote to marketing the CyberKnife or TomoTherapy Systems. Our distributors may not be able to successfully market and sell the CyberKnife or TomoTherapy Systems, may not devote sufficient time and resources to support the marketing and selling efforts and may not market the CyberKnife or TomoTherapy Systems at prices that will permit the product to develop, achieve or sustain market acceptance. In some jurisdictions, we rely on our distributors to manage the regulatory process and we are dependent on their ability to do so effectively. For example, our regulatory approval in Japan was suspended for a period of twelve months during 2003 as a result of a failure of our former CyberKnife System distributor to coordinate product modifications and obtain necessary regulatory clearances in a timely manner. As a result, the CyberKnife System was recalled in Japan and our former Japanese distributor was told to stop selling the CyberKnife System. In response, we retained a regulatory consultant who was not affiliated with our former Japanese distributor and worked with the Japanese Ministry of Health, Labor and Welfare and applied for, and received, approval to sell an updated version of the CyberKnife System under the name of CyberKnife II in Japan. By working with a new distributor, Chiyoda Technol Corporation, we were able to begin distributing the CyberKnife II System in 2004 with no probationary period. In addition, if a distributor is terminated by us or goes out of business, it may take us a period of time to locate an alternative distributor, to seek appropriate regulatory approvals and to train its personnel to market the CyberKnife or TomoTherapy Systems, and our ability to sell and service the CyberKnife or TomoTherapy Systems in the region formerly serviced by such terminated distributor could be materially adversely affected. Any of these factors could materially adversely affect our revenue from international markets, increase our costs in those markets or damage our reputation. If we are unable to attract additional international distributors, our international revenue may not grow. If our distributors experience difficulties, do not actively market the CyberKnife or TomoTherapy Systems or do not otherwise perform under our distribution agreements, our potential for revenue and gross margins from international markets may be dramatically reduced, and our business could be harmed. Finally, our efforts to consolidate distributors, if any, may not prove to be successful and may adversely affect our business, financial condition and results of operations.

Table of Contents

We have limited experience and capability in manufacturing. If we encounter manufacturing problems, or if our manufacturing facilities do not continue to meet federal, state or foreign manufacturing standards, we may be required to temporarily cease all or part of our manufacturing operations, which would result in delays and lost revenue.

The CyberKnife and TomoTherapy Systems are complex, and require the integration of a number of components from several sources of supply. We must manufacture and assemble these complex systems in commercial quantities in compliance with strictly enforced regulatory requirements and at an acceptable cost. We have a limited history of manufacturing commercial quantities of the CyberKnife and TomoTherapy Systems. In particular, we manufacture compact linacs as a component of the CyberKnife and TomoTherapy Systems. Our linac components are extremely complex devices and require significant expertise to manufacture, and as a result of our limited manufacturing experience we may have difficulty producing needed materials in a commercially viable manner. We may encounter difficulties in scaling up production of the CyberKnife or TomoTherapy Systems, including problems with quality control and assurance, component supply shortages, increased costs, shortages of qualified personnel and/or difficulties associated with compliance with local, state, federal and foreign regulatory requirements. If our manufacturing capacity does not keep pace with product demand, we will not be able to fulfill orders in a timely manner which in turn may have a negative effect on our financial results and overall business. Conversely, if demand for our products decreases, the fixed costs associated with excess manufacturing capacity may adversely affect our financial results.

Our manufacturing processes and the manufacturing processes of our third-party suppliers are required to comply with the FDA's Quality System Regulation, or QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, production processes, controls, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. Furthermore, we are required to verify that our suppliers maintain facilities, procedures and operations that comply with our quality requirements. We are also subject to state requirements and licenses applicable to manufacturers of medical devices, and we are required to comply with International Organization for Standardization, or ISO, quality system standards in order to produce products for sale in Europe, as well as various other foreign laws and regulations. Because our manufacturing processes include diagnostic and therapeutic X-ray equipment and laser equipment, we are subject to the electronic product radiation control provisions of the Federal Food, Drug and Cosmetic Act, which requires that we file reports with the FDA, applicable states and our customers regarding the distribution, manufacturing and installation of these types of equipment. The FDA enforces the QSR and the electronic product radiation control provisions through periodic inspections, some of which may be unannounced. We have been, and anticipate in the future to be, subject to such inspections. FDA inspections usually occur every two to three years. During such inspections, the FDA may issue Inspectional Observations on Form FDA 483, listing instances where the manufacturer has failed to comply with applicable regulations and procedures, or warning letters. Our Sunnyvale facility, where we manufacture the CyberKnife System, was most recently inspected by the FDA in 2011. The 2011 inspection resulted in several observations. The initial classification of the inspection is considered to be Voluntary Action Indicated. We have undertaken corrective action in response to the FDA's observations.

If a manufacturer does not adequately address the observations, the FDA may take enforcement action against the manufacturer, including the imposition of fines, restriction of the ability to export product, total shutdown of production facilities and criminal prosecution. If we or a third-party supplier receive a Form FDA 483 classified as Official Action Indicated, fail to pass a QSR inspection, or fail to comply with these, ISO and other applicable regulatory requirements, our operations could be disrupted and our manufacturing operations could be delayed. Our failure to take prompt and satisfactory corrective action in response to an adverse inspection or our failure to comply with applicable standards could result in enforcement actions, including a public warning letter, a shutdown of our manufacturing operations, a recall of our products, civil or criminal penalties, or other sanctions, which would cause our sales and business to suffer. In addition, because some foreign regulatory approvals are based on approvals or clearances from the FDA, any failure to comply with FDA requirements may also disrupt our sales of products in other countries. We cannot assure you that the FDA or other governmental authorities would agree with our interpretation of applicable regulatory requirements or that we or our third-party suppliers have in all instances fully complied with all applicable requirements. If any of these events occurs, our reputation could be harmed, we could lose customers and there could be a material adverse effect on our business, financial condition and results of operations.

If we cannot achieve the required level and quality of production, we may need to outsource production or rely on licensing and other arrangements with third parties who possess sufficient manufacturing facilities and capabilities in compliance with regulatory requirements. Even if we could outsource needed production or enter into licensing or other third party arrangements, this could reduce our gross margin and expose us to the risks inherent in relying on others. We also cannot assure you that our suppliers will deliver an adequate supply of required components on a timely basis or that they will adequately comply with the QSR. Failure to obtain these components on a timely basis would disrupt our manufacturing processes and increase our costs, which would harm our operating results.

Table of Contents

We depend on key employees, the loss of whom would adversely affect our business. If we fail to attract and retain employees with the expertise required for our business, we may be unable to continue to grow our business.

We are highly dependent on the members of our senior management, operations and research and development staff. Our future success will depend in part on our ability to retain these key employees and to identify, hire and retain additional personnel. Competition for qualified personnel in the medical device industry, particularly in northern California and in Madison, Wisconsin, is intense, and finding and retaining qualified personnel with experience in our industry is very difficult. We believe there are only a limited number of individuals with the requisite skills to serve in many of our key positions and we compete for key personnel with other medical equipment and software manufacturers and technology companies, as well as universities and research institutions. It is increasingly difficult to hire and retain these persons, and we may be unable to replace key persons if they leave or fill new positions requiring key persons with appropriate experience. A significant portion of our compensation to our key employees is in the form of stock option grants. A prolonged depression in our stock price could make it difficult for us to retain our employees and recruit additional qualified personnel. We do not maintain, and do not currently intend to obtain, key employee life insurance on any of our personnel. If we fail to hire and retain personnel in key positions, we may be unable to continue to grow our business successfully.

If we do not effectively manage our growth, our business may be significantly harmed.

In order to implement our business strategy, we expect continued growth in our infrastructure requirements, particularly as we expand our manufacturing and research and development capacities. To manage our growth, we must expand our facilities, augment our management, operational and financial systems, hire and train additional qualified personnel, scale-up our manufacturing capacity and expand our marketing and distribution capabilities. Our manufacturing, assembly and installation process is complex and occurs over many months, and we must effectively scale this entire process to satisfy customer expectations and changes in demand. Further, to accommodate our growth and compete effectively, we will be required to improve our information systems. We cannot be certain that our personnel, systems, procedures and internal controls will be adequate to support our future operations. If we cannot manage our growth effectively, our business will suffer.

Changes in interpretation or application of generally accepted accounting principles may adversely affect our operating results.

We prepare our financial statements to conform with Generally Accepted Accounting Principles. These principles are subject to interpretation by the Financial Accounting Standards Board, American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Securities and Exchange Commission and various other regulatory or accounting bodies. A change in interpretations of, or our application of, these principles can have a significant effect on our reported results and may even affect our reporting of transactions completed before a change is announced. Additionally, as we are required to adopt new accounting standards, our methods of accounting for certain items may change, which could cause our results of operations to fluctuate from period to period. For example, due to the significance of the software component in certain of our products, we are currently bound by the software revenue recognition rules for a portion of our business. We adopted ASU 2009-13 and ASU 2009-14 in the first quarter of fiscal 2011 and the impact of the adoption of ASU 2009-13 and ASU 2009-14 on our consolidated financial statements has been assessed at Note 2, *Summary of Significant Accounting Policies*. The application of different types of accounting principles and related potential changes may make it more difficult to compare our financial results from quarter to quarter, and the trading price of our common stock could suffer or become more volatile as a result.

As a strategy to assist our sales efforts, we may offer extended payment terms, which may potentially result in higher Days Sales Outstanding and greater payment defaults.

We offer longer or extended payment terms for qualified customers in some circumstances. As of September 30, 2011, customer contracts with extended payment terms of more than one year amounted to less than 2% of our accounts receivable balance. While we qualify customers to whom we offer longer or extended payment terms, their financial positions may change adversely over the longer time period given for payment. This may result in an increase in payment defaults, which would affect our net earnings. Also, longer or extended payment terms have, and may in the future, result in an increase in our days sales outstanding, or DSO.

Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from executing our growth strategy.

While we believe that our existing cash and short-term and long-term investments will be sufficient to meet our anticipated cash needs for at least the next twelve months, the timing and amount of our working capital and capital expenditure requirements may vary significantly depending on numerous factors, including the other risk factors described above and below, as well as:

Table of Contents

- Market acceptance of our products;
- The need to adapt to changing technologies and technical requirements;
- Our ability to continue to increase orders growth and revenue, manage expenses and integrate the TomoTherapy business;
- Our ability to improve service margins;
- The existence of opportunities for expansion; and
- Access to and availability of sufficient management, technical, marketing and financial personnel.

If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing, which could be difficult or impossible in the current economic and capital markets environments. Our debt levels may impair our ability to obtain additional financing in the future. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. We cannot assure that additional financing, if required, will be available in amounts or on terms acceptable to us, if at all.

We may attempt to acquire new businesses, products or technologies, or enter into strategic collaborations or alliances, and if we are unable to successfully complete these acquisitions or to integrate acquired businesses, products, technologies or employees, we may fail to realize expected benefits or harm our existing business.

Our success will depend, in part, on our ability to expand our product offerings and grow our business in response to changing technologies, customer demands and competitive pressures. In some circumstances, we may determine to do so through the acquisition of complementary businesses, products or technologies, or through collaborating with complementary businesses, rather than through internal development. The identification of suitable acquisition or alliance candidates can be difficult, time consuming and costly, and we may not be able to successfully complete identified acquisitions or alliances. Other companies may compete with us for these strategic opportunities. Furthermore, even if we successfully complete an acquisition or alliance, we may not be able to successfully integrate newly acquired organizations, products or technologies into our operations, and the process of integration could be expensive, time consuming and may strain our resources, and we may not realize the expected benefits of any acquisition, collaboration or strategic alliance. Furthermore, the products and technologies that we acquire or with respect to which we collaborate may not be successful, or may require significantly greater resources and investments than we originally anticipated. In addition, we may be unable to retain employees of acquired companies, or retain the acquired company's customers, suppliers, distributors or other partners who are our competitors or who have close relationships with our competitors. Consequently, we may not achieve anticipated benefits of the acquisitions or alliances which could harm our existing business. In addition, future acquisitions or alliances could result in potentially dilutive issuances of equity securities or the incurrence of debt, contingent liabilities or expenses, or other charges such as in-process research and development, any of which could harm our business and affect our financial results or cause a reduction in the price of our common stock.

Our liquidity could be adversely impacted by adverse conditions in the financial markets.

At September 30, 2011, we had $140.2 million in cash and cash equivalents. The available cash and cash equivalents are held in accounts managed by third party financial institutions and consist of invested cash and cash in our operating accounts. The invested cash is invested in interest bearing funds managed by third party financial institutions. These funds invest in direct obligations of the government of the United States. To date, we have experienced no loss or lack of access to our invested cash or cash equivalents; however, we can provide no assurances that access to our invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

At any point in time, we also have funds in our operating accounts that are with third party financial institutions that exceed the Federal Deposit Insurance Corporation, or FDIC insurance limits. While we monitor daily the cash balances in our operating accounts and adjust the cash balances as appropriate, these cash balances could be impacted if the underlying financial institutions fail or become subject to other adverse conditions in the financial markets. To date, we have experienced no loss or lack of access to cash in our operating accounts.

Table of Contents

Our operations are vulnerable to interruption or loss due to natural disasters, epidemics, terrorist acts and other events beyond our control, which would adversely affect our business.

We have facilities in countries around the world, including three manufacturing facilities, each of which is equipped to manufacture unique components of our products. The manufacturing facilities are located in Sunnyvale, California, Madison, Wisconsin and Chengdu, China. We do not maintain backup manufacturing facilities for all of our manufacturing facilities, so we depend on each of our current facilities for the continued operation of our business. In addition, we conduct a significant portion of other activities, including administration and data processing, at facilities located in the State of California which has experienced major earthquakes in the past, as well as other natural disasters. Chengdu, China, where one of our manufacturing facilities is located, has also experienced major earthquakes in the past. We do not carry earthquake insurance. Unexpected events at any of our facilities, including fires or explosions; natural disasters, such as hurricanes, tornados and earthquakes; war or terrorist activities; unplanned outages; supply disruptions; and failures of equipment or systems, could significantly disrupt our operations, delay or prevent product manufacture and shipment for the time required to repair, rebuild or replace our manufacturing facilities, which could be lengthy, result in large expenses to repair or replace the facilities, and adversely affect our results of operation.

In addition, the recent earthquake and tsunami in Japan, and other collateral events, including, among others, the catastrophic loss of lives, businesses, infrastructure, and delays in transportation, may have a direct negative impact on us or an indirect impact on us by affecting our employees, customers, or the overall economy in Japan, and as a result, we may experience a reduction in demand for our products and services. In addition, we have

experienced, and may continue to experience, delays in sales to potential customers in Japan. We may also experience delays in installation schedules for, or cancellations of sales to, existing Japanese customers. If installation schedules are delayed or products are not accepted by our customers in a timely manner, our reported revenues may differ materially from expectations. As a result of these events, our revenue and our results of operations could be adversely affected.

Risks Related to the Regulation of our Products and Business

Healthcare reform legislation could adversely affect demand for our products, our revenue and our financial condition.

Healthcare costs have risen significantly over the past decade. There have been and continue to be proposals by legislators, regulators, and third-party payors to keep these costs down. Certain proposals, if passed, may impose limitations on the coverage or amounts of reimbursement available for our products from governmental agencies or third-party payors. These limitations could have a negative impact on the demand for our products and services, and therefore on our financial position and results of operations and a material adverse effect on our financial position and results of operations.

On March 23, 2010, the Patient Protection and Affordable Care Act was signed into law, and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 was signed into law. Together, the two measures make the most sweeping and fundamental changes to the U.S. health care system since the creation of Medicare and Medicaid. The Health Care Reform laws include a large number of health-related provisions to take effect over the next four years, including expanding Medicaid eligibility, requiring most individuals to have health insurance, establishing new regulations on health plans, establishing health insurance exchanges, requiring manufacturers to report payments or other transfers of value made to physicians and teaching hospitals, modifying certain payment systems to encourage more cost-effective care and a reduction of inefficiencies and waste and including new tools to address fraud and abuse. There continue to be many programs and requirements for which the details have not yet been fully established or consequences not fully understood, and it is unclear what the full impact of the legislation will be. Effective in 2013, there will be a 2.3% excise tax on U.S. sales of medical devices. U.S. net sales represented 55% of our worldwide net sales in 2011, and therefore, this tax burden may have a material, negative impact on our results of operations and our cash flow.

In addition, various healthcare reform proposals have also emerged at the state level. We cannot predict the exact effect newly enacted laws or any future legislation or regulation will have on us. However, the implementation of new legislation and regulation may materially lower reimbursements for our products, materially reduce medical procedure volumes and significantly and adversely affect our business.

Modifications, upgrades and future products related to the CyberKnife or TomoTherapy Systems or new indications may require new FDA 510(k) clearances or premarket approvals, and such modifications, or any defects in design, manufacture or labeling may require us to recall or cease marketing the CyberKnife or TomoTherapy Systems until approvals or clearances are obtained.

The CyberKnife and TomoTherapy Systems are medical devices that are subject to extensive regulation in the United States by local, state and the federal government, including by the FDA. The FDA regulates virtually all aspects of a medical device's design, development, testing manufacturing, labeling, storage, record keeping, adverse event, reporting, sale, promotion,

distribution and shipping. Before a new medical device, or a new intended use or indication of or claim for an existing product, can be marketed in the United States, it must first receive either premarket approval or 510(k) clearance from the FDA, unless an exemption exists. Either process can be expensive and lengthy. The FDA's 510(k) clearance process generally takes from three to twelve months, but it can last longer. The process of obtaining premarket approval is much more costly and uncertain than the 510(k) clearance process and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA. Despite the time, effort and cost, there can be no assurance that a particular device or a modification of a device will be approved or cleared by the FDA through either the premarket approval process or 510(k) clearance process. Even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses of the product, which may limit the market for those products, and how those products can be promoted.

Medical devices may be marketed only for the indications for which they are approved or cleared. The FDA also may change its policies, adopt additional regulations, or revise existing regulations, each of which could prevent or delay premarket approval or 510(k) clearance of our device, or could impact our ability to market our currently cleared device. We are also subject to medical device reporting regulations which require us to report to the FDA if our products cause or contribute to a death or a serious injury, or malfunction in a way that would likely cause or contribute to a death or a serious injury. We also are subject to Quality System regulations. Our products are also subject to state regulations and various worldwide laws and regulations.

A component of our strategy is to continue to upgrade the CyberKnife and TomoTherapy Systems. Upgrades previously released by us required 510(k) clearance before we were able to offer them for sale. We expect our future upgrades will similarly require 510(k) clearance; however, future upgrades may be subject to the substantially more time consuming and uncertain premarket approval process. If we were required to use the premarket approval process for future products or product modifications, it could delay or prevent release of the proposed products or modifications, which could harm our business.

The FDA requires device manufacturers to make their own determination of whether or not a modification requires an approval or clearance; however, the FDA can review a manufacturer's decision not to submit for additional approvals or clearances. Any modification to an FDA approved or cleared device that would significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new premarket approval or 510(k) clearance. The FDA has recently issued a draft guidance that, if finalized, will result in manufacturers needing to seek a significant number of new or additional clearances for changes made to legally marketed devices. We cannot assure you that the FDA will agree with our decisions not to seek approvals or clearances for particular device modifications or that we will be successful in obtaining 510(k) clearances for modifications.

We have obtained 510(k) clearance for the CyberKnife System for the treatment of tumors anywhere in the body where radiation is indicated, and we have obtained 510(k) clearance for the TomoTherapy Systems to be used as integrated systems for the planning and delivery of IMRT for the treatment of cancer. The TomoTherapy Systems provide precise delivery of radiation to tumors while minimizing the delivery of radiation to vital healthy tissue. The TomoTherapy Systems deliver the radiation therapy, or stereotactic radiotherapy or radiosurgery, treatment in accordance with the physician approved plan using IMRT techniques delivered in a helical tomographic pattern. We have made modifications to the CyberKnife and TomoTherapy Systems in the past and may make additional modifications in the future that we believe do not or will not require additional approvals or clearances. If the FDA disagrees, based on

new finalized guidance and requires us to obtain additional premarket approvals or 510(k) clearances for any modifications to the CyberKnife or TomoTherapy Systems and we fail to obtain such approvals or clearances or fail to secure approvals or clearances in a timely manner, we may be required to cease manufacturing and marketing the modified device or to recall such modified device until we obtain FDA approval or clearance and we may be subject to significant regulatory fines or penalties.

In addition, even if the CyberKnife and TomoTherapy Systems are not modified, the FDA and similar governmental authorities in other countries in which we market and sell our products have the authority to require the recall of our products in the event of material deficiencies or defects in design, manufacture or labeling. A government mandated recall, or a voluntary recall by us, could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling and user manuals. We have voluntarily conducted recalls and product corrections in the past, including two such recalls for the CyberKnife Systems, and two such recalls for the TomoTherapy Systems, during the three months ended September 30, 2011. Each of these recalls was voluntarily initiated by Accuray. To date, no serious health consequences have been reported in connection with these recalls, and the costs associated with each such recall were not material. We cannot ensure that the FDA will not require that we take additional actions to address problems that resulted in previous recalls. Any recall could divert management's attention, cause us to incur significant expenses, generate negative publicity, harm our reputation with customers, negatively affect our future sales and business, require redesign of the CyberKnife or TomoTherapy Systems, and harm our operating results. In these circumstances, we may also be subject to significant enforcement action. If any of these events were to occur, our ability to introduce new or enhanced products in a timely manner would be adversely affected, which in turn would harm our future growth.

Table of Contents

If we or our distributors do not obtain and maintain the necessary regulatory approvals in a specific country, we will not be able to market and sell our products in that country.

To be able to market and sell our products in a specific country, we or our distributors must comply with applicable laws and regulations of that country. In jurisdictions where we rely on our distributors to manage the regulatory process, we are dependent on their ability to do so effectively. While the laws and regulations of some countries do not impose barriers to marketing and selling our products or only require notification, others require that we or our distributors obtain the approval of a specified regulatory body. These laws and regulations, including the requirements for approvals, and the time required for regulatory review vary from country to country. The governmental agencies regulating medical devices in some countries, for example, require that the user interface on medical device software be in the local language. We currently provide user guides and manuals, both paper copies and electronically, in the local language but only provide an English language version of the user interface. Obtaining regulatory approvals is expensive and time-consuming, and we cannot be certain that we or our distributors will receive regulatory approvals in each country in which we market or plan to market our products. If we modify our products, we or our distributors may need to apply for additional regulatory approvals before we are permitted to sell them. We may not continue to meet the quality and safety standards required to maintain the authorizations that we or our distributors have received. It can also be costly for us and our distributors to keep up with regulatory changes issued or mandated from time to time. If we change distributors, it may be time-consuming and disruptive to our business to transfer the required regulatory approvals, particularly if such approvals are maintained by our third-party distributors on our behalf. If we or our distributors are unable to maintain our authorizations, or fail to obtain appropriate authorizations in a particular country, we will no longer be able to sell our products in that country, and our ability to generate revenue will be materially adversely affected.

Within the European Union, we are required under the Medical Device Directive to affix the Conformité Européene, or CE, mark on our products in order to sell the products in member countries of the EU. This conformity to the applicable directives is done through self declaration and is verified by an independent certification body, called a Notified body, before the CE mark can be placed on the device. Once the CE mark is affixed to the device, the Notified Body will regularly audit us to ensure that we remain in compliance with the applicable European laws or directives. CE marking demonstrates that our products comply with the laws and regulations required by the European Union countries to allow free movement of trade within those countries. If we cannot support our performance claims and/or demonstrate or maintain compliance with the applicable European laws and directives, we lose our CE mark, which would prevent us from selling our products within the European Union.

Under the Pharmaceutical Affairs Law in Japan, a pre-market approval necessary to sell, market and import a product, or *shonin*, must be obtained from the Ministry of Health, Labor and Welfare, or MHLW, for our products. Before issuing approvals, MHLW examines the application in detail with regard to the quality, efficacy, and safety of the proposed medical device. The *shonin* is granted once MHLW is content with the safety and effectiveness of the medical device. The time required for approval varies. A delay in approval could prevent us from selling our products in Japan, which could impact our ability to generate revenue and harm our business.

In addition to laws and regulations regarding medical devices, we are subject to a variety of environmental laws and regulations regulating our operations, including those relating to the use, generation, handling, storage, transportation, treatment and disposal of hazardous materials, which laws impose compliance costs on our business and can also result in liability to us. For example, we are in the process of updating the way our products are built such that they will be compliant with the recast Directive on Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, or the RoHS Directive, which applies to medical devices beginning in July 2014. The recast RoHS Directive bans the placing on the EU market of new electrical and electronic equipment containing more than certain levels of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE).

Future legislative or regulatory changes to the healthcare system may affect our business.

In the United States, there have been, and we expect there will continue to be, a number of legislative and regulatory changes and proposals to change the healthcare system, and some could involve changes that significantly affect our business. In addition, certain federal regulatory changes occur at least annually.

In April 2008, at the time CMS published final 2009 Medicare inpatient reimbursement rates, CMS issued final rules implementing significant amendments to the regulations under the federal Ethics in Patient Referrals Act, which is more commonly known as the Stark Law, with an effective date of October 1, 2009. These regulations, among other things, impose additional limitations on the ability of physicians to refer patients to medical facilities in which the physician has an ownership interest for treatment. Among other things, the regulations provide that leases of equipment between physician owners that may refer patients and hospitals must be on a fixed rate, rather than a per use, basis. Physician owned entities have increasingly become involved in the acquisition of medical technologies, including the CyberKnife and TomoTherapy Systems. In many cases, these entities enter

into arrangements with hospitals that bill Medicare for the furnishing of medical services, and the physician owners are among the physicians who refer patients to the entity for services. The regulations limit these arrangements and could require the restructuring of existing arrangements between physicians owned entities and hospitals and may also discourage physicians from participating in the acquisition and ownership of medical technologies. As a result of the finalization of these regulations, some existing CyberKnife and TomoTherapy System operators may have to modify or restructure their corporate or organizational structures. In addition, certain existing customers that planned to open CyberKnife or TomoTherapy centers in the United States involving physician ownership could also have to restructure. Accordingly, these regulations could reduce the attractiveness of medical technology acquisitions, including CyberKnife and TomoTherapy System purchases, by physician-owned joint ventures or similar entities. As a result, these regulations could have an adverse impact on our product sales and therefore on our business and results of operations.

On August 3, 2010, the FDA released for public comment two internal working group reports with numerous recommendations (1) to improve the 510(k) process and (2) to utilize science in regulatory decision making in ways that encourage innovation yet maintain predictability. The public comment period closed in early October 2010 and the FDA is targeting the implementation of or setting timelines for the implementation of "non-controversial" recommendations in 2011. At the same time, the FDA acknowledges that the recommendations are preliminary and no decisions have been made on specific changes to pursue. Nevertheless, we anticipate significant changes will result in the way 510(k) programs will operate and the increased data requirements, including clinical data, to obtain 510(k) clearance or PMA approval. We cannot predict what effect these reforms will have on our ability to obtain 510(k) clearances or PMA approvals in a timely manner or the effect on our business.

On June 9 and 10, 2010, the FDA held a public meeting entitled "Device Improvements to Reduce the Number of Under-doses, Over-doses, and Misaligned Exposures from Therapeutic Radiation." The expressed purpose of the meeting was to discuss steps that could be taken by manufacturers of radiation therapy devices to help reduce misadministration and misaligned exposures that have been reported in the press. In advance of and at the meeting, the FDA requested comments in the following areas: features that should be incorporated into radiation therapy devices and their related software, user training, and quality assurance measures. It is likely that the FDA will use the information gleaned at this meeting to significantly revise the standards and requirements for designing, manufacturing and marketing devices such as ours, creating uncertainty in the current regulatory environment around our current products and development of future products. Future legislative or policy initiatives directed at reducing costs could be introduced at either the federal or state level. We cannot predict what healthcare reform legislation or regulations, if any, will be enacted in the United States or elsewhere, what impact any legislation or regulations related to the healthcare system that may be enacted or adopted in the future might have on our business, or the effect of ongoing uncertainty or public perception about these matters will have on the purchasing decisions of our customers.

In July 2011, the Institute of Medicine, or IOM, which was requested by the FDA to evaluate and make recommendations on the 510(k) program, released its report entitled "Medical Devices and the Public Health, the FDA 510(k) Clearance Process.' The report contained numerous and broad recommendations that, if followed, will have a significant impact on the medical device industry in general, and our operations specifically. We cannot predict what effect the recommendations by the IOM in its report to the FDA will have on the 510(k) program or our ability to obtain 510(k) clearances in a timely manner.

We are required to comply with federal and state "fraud and abuse" laws, and if we are unable to comply with such laws, we could face substantial penalties and we could be excluded from government healthcare programs, which would adversely affect our business, financial condition and results of operations.

We are directly or indirectly through our customers, subject to various federal, state and foreign laws pertaining to healthcare fraud and abuse. These laws which directly or indirectly affect our ability to operate our business primarily include, but are not limited to, the following:

- The federal Anti-Kickback Statute, which prohibits persons from soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual, or furnishing or arranging for a good or service, for which payment may be made under federal healthcare programs such as Medicare and Medicaid;

- State law equivalents to the Anti-Kickback Statute, which may not be limited to government reimbursed items;

- The Ethics in Patient Referral Act of 1989, also known as the Stark Law, which prohibits, subject to certain exceptions, physician referrals of Medicare and Medicaid patients to an entity providing certain "designated health services" if the physician or an immediate family member has any financial relationship with the entity. The Stark Law also prohibits the entity receiving the referral from billing for any good or service furnished pursuant to an unlawful referral;

- State law equivalents to the Stark Law, which may provide even broader restrictions and require greater disclosures than the federal law;

- The federal False Claims Act, which prohibits the knowing filing or causing the filing of a false claim or the knowing use of false statements to obtain payment from the federal government; and

- Similar laws in foreign countries where we conduct business.

The following arrangements with purchasers and their agents have been identified by the Office of the Inspector General of the Department of Health and Human Services as ones raising potential risk of violation of the federal Anti-Kickback Statute:

- Discount and free good arrangements that are not properly disclosed or accurately reported to federal healthcare programs;

- Product support services, including billing assistance, reimbursement consultation, marketing and other services specifically tied to support of the purchased product, offered in tandem with another service or program (such as reimbursement guarantee) that confers a benefit to the purchaser;

- Educational grants conditioned in whole or in part on the purchase of equipment, or otherwise inappropriately influenced by sales and marketing considerations;

- Research funding arrangements, particularly post-market research activities, that are linked directly or indirectly to the purchase of products, or otherwise inappropriately influenced by sales and marketing considerations; and

- Other offers of remuneration to purchasers that is expressly or impliedly related to a sale or sales volume, such as "prebates" and "upfront payment," other free or reduced-price goods or services, and payments to cover costs of "converting" from a competitor's products, particularly where the selection criteria for such offers vary with the volume or value of business generated.

We have various arrangements with physicians, hospitals and other entities which implicate these laws. For example, physicians who own our stock also provide medical advisory and other consulting and personal services. Similarly, we have a variety of different types of arrangements with our customers. For example, our shared ownership program entails the provision of our products to our customers under a deferred payment program, where we generally receive the greater of a fixed minimum payment or a portion of the revenues of services. Included in the fee we charge for the placement and shared ownership program are a variety of services, including physician training, educational and marketing support, general reimbursement guidance and technical support. In the past, we have also provided loans to our customers. We also provide research grants to customers to support customer studies related to, among other things, our CyberKnife and TomoTherapy Systems. Certain of these arrangements do not meet Anti-Kickback Statute safe harbor protections, which may result in increased scrutiny by government authorities having responsibility for enforcing these laws.

If our past or present operations are found to be in violation of any of the laws described above or other similar governmental regulations to which we or our customers are subject, we may be subject to the applicable penalty associated with the violation, including significant civil and criminal penalties, damages, fines, imprisonment and exclusion from the Medicare and Medicaid programs. The impact of any such violations may lead to curtailment or restructuring of our operations, which could adversely affect our ability to operate our business and our financial results. The risk of our being found in violation of these laws is increased by the fact that many of these laws are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation. If enforcement action were to occur, our reputation and our business and financial condition may be harmed, even if we were to prevail or settle the action. Similarly, if the physicians or other providers or entities with which we do business are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on our business.

If we are found to have violated laws protecting the confidentiality of patient health information, we could be subject to civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of federal and state laws protecting the confidentiality of certain patient health information, including patient records, and restricting the use and disclosure of that protected information. In particular, the U.S. Department of Health and Human Services has promulgated patient privacy rules under the Health Insurance Portability and Accountability Act of 1996, or HIPAA. These privacy rules protect medical records and other personal health information of patients by limiting their use and disclosure, giving patients the right to access, amend and seek accounting of their own health information and limiting most uses and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose. Although we are not a covered entity under HIPAA, we have entered into agreements with certain covered entities under which we are

considered to be a "business associate" under HIPAA. As a business associate, we are required to implement policies, procedures and reasonable and appropriate physical, technical and administrative security measures to protect individually identifiable health information we receive from covered entities. Our failure to protect health information received from customers could subject us to liability to both the government and the covered entity, adverse publicity, and could harm our business and impair our ability to attract new customers.

The HIPAA privacy standard was recently amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), enacted as part of the American Recovery and Reinvestment Act of 2009. HITECH significantly increases the civil money penalties for violations of patient privacy rights protected under HIPAA. Furthermore, as of February 2010, Business Associates who have access to patient health information provided by hospitals and healthcare providers are now directly subject to HIPAA, including a new enforcement scheme and inspection requirements.

Certain governmental agencies, such as the U.S. Department of Health and Human Services and the Federal Trade Commission, have the authority to protect against the misuse of consumer information by targeting companies that collect, disseminate or maintain personal information in an unfair or deceptive manner. We are also subject to the laws of those foreign jurisdictions in which we sell the CyberKnife and TomoTherapy Systems, some of which currently have more protective privacy laws. If we fail to comply with applicable regulations in this area, our business and prospects could be harmed.

Risks Related to Our Common Stock

The price of our common stock is volatile and may continue to fluctuate significantly, which could lead to losses for stockholders.

The trading prices of the stock of high-technology companies of our size can experience extreme price and volume fluctuations. These fluctuations often have been unrelated or out of proportion to the operating performance of these companies. Our stock price has experienced periods of volatility. Broad market fluctuations may also harm our stock price. Any negative change in the public's perception of the prospects of companies that employ similar technology or sell into similar markets could also depress our stock price, regardless of our actual results.

In addition to the other risk factors described above and below, factors affecting the trading price of our common stock include:

- Regulatory developments related to manufacturing, marketing or sale of the CyberKnife or TomoTherapy Systems;

- Our ability to successfully integrate the TomoTherapy acquisition;

- Economic changes and overall market volatility;

- Political or social uncertainties;
- Changes in product pricing policies;
- Variations in our operating results, as well as costs and expenditures;
- Changes in our operating results as a result of problems with our internal controls;
- Announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- Recruitment or departure of key personnel;
- Changes in the estimates of our operating results or changes in recommendations by any securities analyst that elects to follow our common stock;
- Market conditions in our industry, the industries of our customers and the economy as a whole;
- Sales of large blocks of our common stock; and
- Changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results.

Table of Contents

The acquisition of TomoTherapy may not be accretive and may cause dilution to our earnings per share, which may negatively affect the market price of our common stock.

We currently anticipate that the acquisition of TomoTherapy will be accretive to our earnings per share (on an adjusted earnings basis) in our fiscal year beginning July 1, 2012. This expectation is based on current estimates, which may change materially. We may also encounter additional transaction-related costs or other factors such as the failure to realize all of the benefits anticipated in the acquisition. All of these factors could cause dilution to our earnings per share or decrease or delay the expected accretive effect of the acquisition and cause a decrease in the market price of our common stock.

Future issuances of shares of our common stock or substantial sales of our common stock by our stockholders, including sales pursuant to 10b5-1 plans, could depress our stock price regardless of our operating results.

Any issuance of equity securities could dilute the interests of our stockholders and could substantially decrease the trading price of our common stock. We may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy (including in connection with acquisitions, strategic collaborations or other transactions), to adjust our ratio of debt to equity, to satisfy our obligations upon the exercise of outstanding warrants or options or for other reasons.

On August 1, 2011, we issued $100 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2016, which we refer to as the Notes. The price of our common stock could also be affected by possible sales of our common stock by investors who view the Notes as a more attractive means of equity participation in our company or by any hedging or arbitrage trading activity that involves our common stock. To the extent we issue common stock upon conversion of the Notes, that conversion would dilute the ownership interests of our stockholders.

Moreover, if our existing stockholders sell a large number of shares of our common stock or the public market perceives that existing stockholders might sell shares of common stock, including sales pursuant to 10b5-1 plans, the market price of our common stock could decline significantly. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

Increased leverage as a result of the Notes offering may harm our financial condition and operating results.

As of September 30, 2011, we had total consolidated long-term liabilities of approximately $88.9 million, including Notes in the amount of $76.6 million. Our level of indebtedness could have important consequences to you, because:

- it could affect our ability to satisfy our obligations under the Notes;
- a substantial portion of our cash flows from operations will have to be dedicated to interest and principal payments and may not be available for operations, working capital, capital expenditures, expansion, acquisitions or general corporate or other purposes;
- it may impair our ability to obtain additional financing in the future;
- it may limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- it may make us more vulnerable to downturns in our business, our industry or the economy in general.

The conditional conversion features of the Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion features of the Notes are triggered, holders of the Notes will be entitled to convert the Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying solely cash in lieu of any fractional share), including if we have irrevocably elected full physical settlement upon conversion, we would be required to make cash payments to satisfy all or a portion of our conversion obligation based on the applicable conversion rate, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Notes, if we have irrevocably elected net

share settlement upon conversion we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which could result in a material reduction of our net working capital.

Table of Contents

Provisions in the indenture for the Notes, our certificate of incorporation and our bylaws could discourage or prevent a takeover, even if an acquisition would be beneficial in the opinion of our stockholders.

Provisions of our certificate of incorporation and bylaws could make it more difficult for a third party to acquire us, even if doing so would be beneficial in the opinion of our stockholders. These provisions include:

- Authorizing the issuance of "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- Establishing a classified board of directors, which could discourage a takeover attempt;
- Prohibiting cumulative voting in the election of directors, which would limit the ability of less than a majority of stockholders to elect director candidates;
- Limiting the ability of stockholders to call special meetings of stockholders;
- Prohibiting stockholder action by written consent and requiring that all stockholder actions be taken at a meeting of our stockholders; and
- Establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law may discourage, delay or prevent a change of control of our company. Generally, Section 203 prohibits stockholders who, alone or together with their affiliates and associates, own more than 15% of the subject company from engaging in certain business combinations for a period of three years following the date that the stockholder became an interested stockholder of such subject company without approval of the board or $66^{2}/_{3}$% of the independent stockholders. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock.

Furthermore, if a "fundamental change" (as defined in the indenture for the Notes) occurs, holders of the Notes will have the right, at their option, to require us to repurchase all or a portion of their Notes. A "fundamental change" generally occurs when there is a change in control of the Company (acquisition of 50% or more of our voting stock, liquidation or sale of the Company not for stock) or trading of our stock is terminated. In the event of a "make-whole fundamental change" (as defined in the indenture for the Notes), we may also be required to increase the conversion rate applicable to Notes surrendered for conversion in connection with such make-whole fundamental change. A "make-whole fundamental change" is generally a sale of the company not for stock in another publicly traded company. In addition, the indenture for the Notes prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the Notes.

Our directors, executive officers and major stockholders own approximately 23.8% of our outstanding common stock as of September 30, 2011, which could limit stockholders' ability to influence the outcome of key transactions, including changes of control.

As of September 30, 2011, our directors, executive officers, and current holders of 5% or more of our outstanding common stock, held, in the aggregate, approximately 23.8% of our outstanding common stock. This concentration of ownership may delay, deter or prevent a change of control of our company and will make some transactions more difficult or impossible without the support of these stockholders.

We have not paid dividends in the past and do not expect to pay dividends in the future.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all future earnings for the operation and expansion of our business and, therefore, do not anticipate declaring or paying cash dividends in the foreseeable future. The payment of dividends will be at the discretion of our board of directors and will depend on our results of operations, capital requirements, financial condition, prospects, contractual arrangements, and other factors our board of directors may deem relevant. If we do not pay dividends, a return on a stockholders' investment will only occur if our stock price appreciates.

Table of Contents

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(a) *Sales of Unregistered Securities*

None.

(b) *Use of Proceeds from Public Offering of Common Stock*

None.

(c) *Purchases of Equity Securities by the Issuer and Affiliated Purchasers*

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. (Removed and Reserved)

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Number	Description
3.1	Amended and Restated Bylaws. (1)
10.1	Indenture by and between the Registrant and The Bank of New York Mellon Trust Company, N.A., dated as of August 1, 2011.
10.2	Amendment to Strategic Alliance Agreement by and between the Registrant and Siemens Aktiengesellschaft, dated August 3, 2011.
10.3	Amendment to Employment Terms Letter Agreement by and between the Registrant and Chris Raanes, effective July 25, 2011.
10.4	Amended and Restated Employment Letter Agreement by and between the Registrant and Euan S. Thomson, Ph.D., dated September 29, 2011.
10.5	Employment Letter Agreement by and between the Registrant and Kelly Londy, dated September 13, 2011.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. 1350.
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

(1) Incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on August 29, 2011.

* XBRL (eXtensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections.

Table of Contents

SIGNATURE

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

ACCURAY INCORPORATED

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

By: /s/ Derek Bertocci
Derek Bertocci
Senior Vice President and Chief Financial Officer

Date: November 8, 2011

ACCURAY INCORPORATED

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

as Trustee

INDENTURE

Dated as of August 1, 2011

3.75% CONVERTIBLE SENIOR NOTES DUE 2016

TABLE OF CONTENTS

INDENTURE, dated as of August 1, 2011, between Accuray Incorporated, a Delaware corporation (the "**Company**"), and The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States, as trustee (the "**Trustee**").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's 3.75% Convertible Senior Notes due 2016 (the "**Securities**").

I. DEFINITIONS AND INCORPORATION BY REFERENCE

1.01 DEFINITIONS.

"**Additional Interest**" means all amounts, if any, payable pursuant to **Sections 4.09(A)**, **4.09(B)** and **6.02(B)**, as applicable.

"**Affiliate**" means, with respect to a specified Person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For this purpose, "control" shall mean the power to direct the management and policies of a Person through the ownership of securities, by contract or otherwise.

"**Asset Sale Make-Whole Fundamental Change**" means a sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated property or assets of the Company to any "person" or "group" (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act),

including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act (but excluding any of the Company's Subsidiaries), other than a sale, transfer, lease, conveyance or other disposition that constitutes a Listed Stock Business Combination.

"**Bid Solicitation Agent**" means the Person appointed by the Company to solicit bids for the Trading Price of the Securities in accordance with **Section 10.01(B)(ii)**. The Company shall initially act as the Bid Solicitation Agent.

"**Board of Directors**" means the board of directors of the Company or any committee thereof duly authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Capital Stock**" of any Person means any and all shares, interests, participations or other equivalents (however designated) of capital stock of such Person and all warrants or options to acquire such capital stock.

"**Cash Settlement Averaging Period**" means, (i) subject to clause (ii) below, with respect to any Conversion Date occurring on or after the thirty-second (32nd) Business Day immediately preceding the Maturity Date, the thirty (30) consecutive Trading Day period

beginning on, and including, the thirty-second (32nd) Business Day immediately preceding the Maturity Date; (ii) with respect to any Conversion Date occurring on or after the date of the Company's issuance of a Redemption Notice with respect to the Securities pursuant to **Section 3.02** and prior to the relevant Redemption Date, the thirty (30) consecutive Trading Day period beginning on, and including, the thirty-second (32nd) Business Day immediately preceding such Redemption Date; or (iii) in all other cases, the thirty (30) consecutive Trading Day period beginning on, and including, the third (3rd) Business Day immediately following the relevant Conversion Date.

"**Change in Control**" shall be deemed to have occurred at such time as:

(a) any "person" or "group" (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as that term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the Company's Voting Stock;

(b) (i) the Company consolidates with, or merges with or into, another Person or any Person consolidates with, or merges with or into, the Company or (ii) there occurs a sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated property or assets of the Company to any "person" or "group" (as those terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act (but excluding any of the Company's Subsidiaries), unless:

(1) in the case of a transaction described in **subclause (i)** or **subclause (ii)** in **clause (b)** above, both of the following conditions are satisfied: (x) at least ninety percent (90%) of the consideration (other than cash payments for fractional shares or pursuant to statutory appraisal rights) in such consolidation, merger, sale, transfer, lease, conveyance or other disposition consists of common stock and any associated rights listed and traded on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) (or which will be so listed and traded when issued or exchanged in connection with such consolidation, merger, sale, transfer, lease, conveyance or other disposition); and (y) as a result of such consolidation, merger, sale, transfer, lease, conveyance or other disposition, the Securities become convertible into solely such consideration (subject to the Company's right to pay cash in respect of all or a portion of its conversion obligation as described in **Section 10.02(A)**) (such a consolidation, merger, sale, transfer, lease, conveyance or other disposition that satisfies the conditions set forth in this **clause (b)(1)**, a "**Listed Stock Business Combination**"); or

(2) in the case of a transaction described in **subclause (i)** in **clause (b)** above, the Persons that "beneficially owned" (as that term is

used in Rule 13d-3 under the Exchange Act), directly or indirectly, the shares of the Company's Voting Stock immediately prior to such consolidation or merger, "beneficially own," directly or indirectly, immediately after such consolidation or merger, shares of the surviving or continuing corporation's Voting Stock representing at least a majority of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving or continuing corporation in substantially the same proportion as such ownership immediately prior to such consolidation or merger; or

(c) the Company is liquidated or dissolved or holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company.

"**close of business**" means 5:00 p.m., New York City time.

"**Closing Sale Price**" on any date means the per share price of the Common Stock on such date, determined (i) on the basis of the closing per share sale price (or if no closing per share sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date on the principal U.S. national or regional securities exchange on which shares of Common Stock are listed; or (ii) if shares of Common Stock are not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. or a similar organization; *provided*, *however*, that in the absence of any such report or quotation, the "**Closing Sale Price**" shall be the price determined by a nationally recognized independent investment banking firm retained by the Company (which may be the Initial Purchaser or an affiliate thereof) for such purpose as

most accurately reflecting the per share price that a fully informed buyer, acting on his own accord, would pay to a fully informed seller, acting on his own accord, in an arms-length transaction, for a share of Common Stock.

"**Common Stock**" means the common stock, par value $0.001 per share, of the Company at the date of this Indenture, subject to **Section 10.12**.

"**Common Stock Change Make-Whole Fundamental Change**" means any transaction or series of related transactions (other than a consolidation or merger that constitutes a Listed Stock Business Combination), in connection with which (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization, asset sale, lease of assets or otherwise) the Common Stock is exchanged for, converted into, acquired for or constitutes solely the right to receive other securities, other property, assets or cash.

"**Company**" means the party named as such in the recitals above until a successor replaces it pursuant to the applicable provision hereof and thereafter means the successor. The foregoing sentence shall likewise apply to any such successor or subsequent successor.

"**Company Order**" means a written request or order signed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, its Chief Operating Officer,

its Chief Financial Officer or any Vice President and its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, and delivered to the Trustee.

"**Conversion Date**" with respect to a Security means the date on which a Holder satisfies all the requirements for such conversion specified in the first paragraph of **Section 10.02(A)**.

"**Conversion Notice**" means a "Conversion Notice" in the form attached as Attachment 2 to the form of Security attached hereto as Exhibit A.

"**Conversion Price**" means, as of any date of determination, the dollar amount derived by dividing one thousand dollars ($1,000) by the Conversion Rate in effect on such date.

"**Conversion Rate**" shall initially be 105.5548 shares of Common Stock per $1,000 principal amount of Securities, subject to adjustment as provided in **Article X**.

"**Conversion Trigger Price**" means, as of any date of determination, the dollar amount derived by multiplying the Conversion Price in effect on such date by 130%.

"**Conversion Value**" per $1,000 principal amount of Securities on each Trading Day in the Security Measurement Period is the product of the Closing Sale Price per share of the Common Stock on that Trading Day and the Conversion Rate in effect on that Trading Day.

"**Corporate Trust Office of the Trustee**" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office as of the date hereof is located at 700 S. Flower Street, Suite 500, Los Angeles, CA 90017, Attention: Corporate Unit, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Daily Conversion Value**" means, for each of the thirty (30) consecutive Trading Days in the Cash Settlement Averaging Period, one thirtieth (1/30th) of the product of (i) the applicable Conversion Rate and (ii) the Volume-Weighted Average Price of the Common Stock on such Trading Day.

"**Daily Settlement Amount**" for each of the thirty (30) consecutive Trading Days in the Cash Settlement Averaging Period, shall consist of (x) cash equal to the lesser of (i) the Specified Cash Amount, *divided by* thirty (30) (such quotient being referred to as the "**Daily Measurement Value**") and (ii) the Daily Conversion Value for such Trading Day; and (y) to the extent the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Volume-Weighted Average Price of the Common Stock on such Trading Day.

"**Default**" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"**Depositary**" means The Depository Trust Company, its nominees and successors.

"**Effective Date**" means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, respectively, reflecting the transaction.

"**Ex-Date**" means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Fundamental Change**" shall be deemed to occur upon the occurrence of either a Change in Control or a Termination of Trading.

"**Holder**" means a Person in whose name a Security is registered on the Registrar's books.

"**Indenture**" means this Indenture as amended or supplemented from time to time.

"**Initial Purchaser**" means UBS Securities LLC.

"**Interest Payment Date**" means February 1 and August 1 of each year, beginning on February 1, 2012.

"**Issue Date**" means August 1, 2011.

"**Make-Whole Fundamental Change**" means an Asset Sale Make-Whole Fundamental Change or a Common Stock Change Make-Whole Fundamental Change.

"**Market Disruption Event**" means (i) a failure by the primary United States national or regional securities exchange or market on which shares of Common Stock or the relevant securities are listed or admitted to trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for shares of Common Stock or the relevant securities for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in shares of Common Stock (or the relevant securities) or in any options contracts or future contracts relating to shares of Common Stock (or the relevant securities).

"**Maturity Date**" means August 1, 2016.

"**Offering Memorandum**" means the preliminary offering memorandum of the Company relating to the offering and sale of the Securities, dated July 26, 2011, relating to the Securities.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, any Executive Vice President, and Senior Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.

"**Officer's Certificate**" means a certificate signed by one Officer of the Company.

"**Opinion of Counsel**" means a written opinion from legal counsel who may be an employee of or counsel for the Company, or other counsel reasonably acceptable to the Trustee.

"**open of business**" means 9:00 a.m., New York City time.

"**Option**" means the Initial Purchaser's option to acquire up to $15,000,000 aggregate principal amount of additional Securities ("**Option Securities**") as provided for in the Purchase Agreement.

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof.

"**Purchase Agreement**" means the Purchase Agreement dated July 26, 2011 between the Company and the Initial Purchaser.

"**Purchase Notice**" means a "Purchase Notice" in the form attached as Attachment 3 to the form of Security attached hereto as Exhibit A.

"**record date**" means, unless the context requires otherwise, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which Common Stock is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"**Record Date**" for interest payable in respect of any Security on any Interest Payment Date means the January 15 or July 15 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"**Restricted Security**" means a Security that constitutes a "restricted security" within the meaning of Rule 144(a)(3) under the Securities Act; *provided, however*, that the Trustee shall be

entitled to request, and conclusively rely on, an Opinion of Counsel with respect to whether any Security constitutes a Restricted Security.

"**Rule 144A**" means Rule 144A under the Securities Act.

"**Scheduled Trading Day**" means, with respect to shares of Common Stock or any other security, a day that is scheduled to be a Trading Day on the primary United States national securities exchange or market on which shares of Common Stock or the relevant securities are listed or admitted for trading. If shares of Common Stock or the relevant securities are not so listed or admitted for trading, "**Scheduled Trading Day**" means any Business Day.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securities Agent**" means any Registrar, Paying Agent, Bid Solicitation Agent, Conversion Agent or co-registrar or co-agent.

"**Significant Subsidiary**" with respect to any Person means any "subsidiary" (as defined in Rule 1-02(x) of Regulation S-X under the Exchange Act) of such Person that constitutes a "significant subsidiary" within the meaning of Rule 1-02(w) of Regulation S-X under the Exchange Act.

"**Subsidiary**" means (i) a corporation a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by the Company, by one or more subsidiaries of the Company or by the Company and one or more of its subsidiaries or (ii) any other Person (other than a corporation) in which the Company, one or more of its subsidiaries, or the Company and one or more of its subsidiaries, directly or indirectly, at the date of determination thereof, own at least a majority ownership interest.

"**Termination of Trading**" shall be deemed to occur if shares of Common Stock (or other common stock into which the Securities are then convertible (subject to the Company's right to pay cash in respect of all or a portion of its conversion obligation as described in **Section 10.02(A)**)) are not listed for trading on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

"**TIA**" means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb) as amended and in effect from time to time.

"**Trading Day**" means, with respect to shares of Common Stock or any other security, a day during which (i) trading in shares of Common Stock or such other security generally occurs, and (ii) a Market Disruption Event has not occurred; *provided* that if shares of Common Stock or such other security is not listed for trading or quotation on or by any exchange, bureau or other organization, "**Trading Day**" shall mean any Business Day.

"**Trading Price**" of the Securities on any Trading Day means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for $2.0 million principal amount of Securities at approximately 3:30 p.m., New York City time, on such Trading Day from three independent nationally recognized securities dealers the Company selects (which may include the Initial Purchaser or an affiliate thereof); *provided* that if the Bid Solicitation Agent can reasonably obtain only two such bids, then the average of such two bids shall instead be used, and if the Bid Solicitation Agent can reasonably obtain only one such bid, then such single bid shall be used; and *provided*, *further*, that if, on any Trading Day, the Bid Solicitation Agent cannot reasonably obtain at least one bid for $2.0 million principal amount of the Securities from an independent nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Securities shall be deemed to be equal to 98% of the Conversion Value on such Trading Day. If (i) the Company is not acting as Bid Solicitation Agent and it does not instruct the Bid Solicitation Agent to obtain bids when required pursuant to **Section 10.01(B)(ii)**, or if the Company gives such instruction to the Bid Solicitation Agent and the Bid Solicitation Agent fails to make such determination, or (ii) the Company is acting as Bid Solicitation Agent and the Company fails to determine the Trading Price when required pursuant to **Section 10.01(B)(ii)**, then, in each case, the "**Trading Price**" per $1,000 principal amount of Securities shall be deemed to be equal to 98% of the Conversion Value of the Securities on each Trading Day of such failure.

"**Trustee**" means the party named as such in this Indenture until a successor replaces it in accordance with the provisions hereof and thereafter means the successor. The foregoing sentence shall likewise apply to any such successor or subsequent trustee.

"**Volume-Weighted Average Price**" per share of Common Stock on any Trading Day means such price as displayed on Bloomberg (or any successor service) page ARAY.UQ <equity> AQR in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day, or, if such price is not available, the "**Volume-Weighted Average Price**" means the market value per share of Common Stock on such Trading Day as determined by a nationally recognized investment banking firm (which may be the Initial Purchaser or an affiliate thereof) retained for this purpose by the Company.

"**Voting Stock**" of any Person means the total outstanding voting power of all classes of Capital Stock of such Person entitled to vote generally in the election of directors of such Person.

1.02 **OTHER DEFINITIONS.**

Term	Defined in Section
"**Additional Interest Notice**"	4.09(D)
"**Additional Securities**"	2.02
"**Applicable Price**"	10.15(D)
"**Bankruptcy Law**"	6.01
"**Business Day**"	13.06
"**Clause A Distribution**"	10.06(c)
"**Clause B Distribution**"	10.06(c)
"**Clause C Distribution**"	10.06(c)

"**Common Stock Private Placement Legend**"	2.17
"**Conversion Agent**"	2.03
"**Custodian**"	6.01
"**Daily Measurement Value**"	1.01
"**Distributed Property**"	10.06(c)
"**Event of Default**"	6.01
"**Full Physical Settlement**"	10.02(C)

"**Full Physical Settlement Election**"	10.02(C)
"**Fundamental Change Notice**"	3.05(B)
"**Fundamental Change Repurchase Date**"	3.05(A)
"**Fundamental Change Repurchase Price**"	3.05(A)
"**Fundamental Change Repurchase Right**"	3.05(A)
"**Global Security**"	2.01
"**Legal Holiday**"	13.06
"**Listed Stock Business Combination**"	1.01
"**Make-Whole Applicable Increase**"	10.15(B)
"**Make-Whole Conversion Period**"	10.15(A)
"**Maximum Conversion Rate**"	10.15(B)
"**Merger Event**"	10.12
"**Net Share Settlement**"	10.02(B)
"**Net Share Settlement Election**"	10.02(B)
"**Option Securities**"	1.01
"**Optional Redemption**"	3.01
"**Participants**"	2.15(A)
"**Paying Agent**"	2.03
"**Physical Securities**"	2.01
"**Redemption Date**"	3.02(A)
"**Redemption Notice**"	3.02(A)
"**Redemption Price**"	3.01
"**Reference Property**"	10.12
"**Registrar**"	2.03
"**Repurchase Upon Fundamental Change**"	3.05(A)
"**Resale Restriction Termination Date**"	2.17
"**Securities**"	Preamble
"**Security Measurement Period**"	10.01(B)(ii)
"**Security Private Placement Legend**"	2.17
"**Specified Cash Amount**"	10.02(A)
"**Spin-Off**"	10.06(c)
"**Trading Price Condition**"	10.01(B)(ii)
"**Trigger Event**"	10.06(c)

1.03 **INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT**

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"**Commission**" means the SEC;
"**indenture securities**" means the Securities;
"**indenture security holder**" means a Holder;
"**indenture to be qualified**" means this Indenture;
"**indenture trustee**" or "**institutional trustee**" means the Trustee; and
"**obligor**" on the indenture securities means the Company or any successor.

All other terms used in this Indenture that are defined by the TIA, defined by the TIA by reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein have the meanings so assigned to them.

1.04 **RULES OF CONSTRUCTION.**

Unless the context otherwise requires:

(i) a term has the meaning assigned to it;

(ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles in effect from time to time;

(iii) "or" is not exclusive;

(iv) "including" means "including without limitation";

(v) words in the singular include the plural and in the plural include the singular;

(vi) provisions apply to successive events and transactions;

(vii) the term "**interest**" means any interest payable under the terms of the Securities, including Additional Interest, if any, payable pursuant to **Sections 4.09(A)**, **4.09(B)** and **6.02(B)**, unless the context otherwise requires;

(viii) the term "**principal**" means the principal of any Security payable under the terms of such Securities, unless the context otherwise requires;

(ix) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture; and

(x) references to currency shall mean the lawful currency of the United States of America, unless the context requires otherwise.

II. THE SECURITIES

2.01 FORM AND DATING.

The Securities and the Trustee's certificate of authentication shall be substantially in the form set forth in **Exhibit A**, which is incorporated in and forms a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage; *provided* that such notations, legends or endorsements are in a form reasonably acceptable to the Company. Each Security shall be dated the date of its authentication.

Securities offered and sold in reliance on Rule 144A shall be issued initially in the form of one or more Global Securities, substantially in the form set forth in **Exhibit A** (each, a "**Global Security**"), deposited with the Trustee, as custodian for the Depositary, registered in the name of the Depositary or a nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided and bearing the legends set forth in **Exhibits B-1A** and **B-2**. The aggregate principal amount of each Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, upon the occurrence of which the Trustee shall make a corresponding adjustment on the "Schedule of Exchanges of Interests in the Global Security" attached thereto, as hereinafter provided.

Securities issued in exchange for interests in a Global Security pursuant to **Section 2.15** may be issued in the form of permanent certificated Securities in registered form in substantially the form set forth in **Exhibit A** (the "**Physical Securities**") and, if applicable, bearing any legends required by **Section 2.17**.

2.02 EXECUTION AND AUTHENTICATION.

One duly authorized Officer shall sign the Securities for the Company by manual or facsimile signature.

A Security's validity shall not be affected by the failure of an Officer whose signature is on such Security to hold, at the time the Security is authenticated, the same office at the Company.

A Security shall not be valid until duly authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

Upon a written order of the Company signed by one Officer of the Company, the Trustee shall authenticate Securities for original issue in the aggregate principal amount of $100,000,000 and such additional principal amount, if any, as shall be determined pursuant to the next sentence of this **Section 2.02**. Upon receipt by the Trustee of an Officer's Certificate stating that the Initial Purchaser has elected to purchase from the Company a specified principal amount of Option Securities, not to exceed $15,000,000, pursuant to the Option, the Trustee shall authenticate and deliver such specified principal amount of Option Securities to or upon the written order of the Company signed as provided in the immediately preceding sentence. Such Officer's Certificate must be received by the Trustee not later than the proposed date for delivering such Option Securities. The aggregate principal amount of Securities outstanding at

any time may not exceed $115,000,000, subject to the immediately succeeding paragraph and except for Securities authenticated and delivered in lieu of mutilated, lost, destroyed or stolen Securities pursuant to **Section 2.07**.

The Company may, without the consent of Holders of the Securities, increase the aggregate principal amount of Securities by issuing additional Securities ("**Additional Securities**") in an unlimited aggregate principal amount in the future on the same terms and conditions, except for any difference in the issue price and interest accrued prior to the issue date of the Additional Securities, and with the same CUSIP number as the Securities issued hereunder; *provided* that if such Additional Securities are not fungible with the Securities issued hereunder for U.S. federal income tax purposes, such Additional Securities will have a separate CUSIP number. The Securities initially issued hereunder and any such Additional Securities shall rank equally and ratably and shall be treated as a single series of debt securities for all purposes under this Indenture.

Upon (1) a written order of the Company signed by two (2) Officers or by an Officer and an Assistant Treasurer of the Company, (2) Officer's Certificate and (3) Opinion of Counsel, the Trustee shall authenticate Securities not bearing the Security Private Placement Legend to be issued to the transferees when sold pursuant to an effective registration statement under the Securities Act as set forth in **Section 2.16(B)**.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such authenticating agent. An authenticating agent so appointed has the same rights as a Securities Agent to deal with the Company and its Affiliates.

The Securities shall be issuable only in registered form without interest coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

2.03 REGISTRAR, PAYING AGENT, BID SOLICITATION AGENT AND CONVERSION AGENT.

The Company shall maintain, or shall cause to be maintained, (i) an office or agency located in the United States, where Securities may be presented for registration of transfer or for exchange ("**Registrar**"), (ii) an office or agency located in the United States, where Securities may be presented for payment ("**Paying Agent**") and (iii) an office or agency located in the United States, where Securities may be presented for conversion ("**Conversion Agent**"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may appoint or change one or more co-registrars, one or more additional paying agents and one or more additional conversion agents without notice and may act in any such capacity on its own behalf. The Company may vary or terminate the appointment of the Paying Agent, Bid Solicitation Agent, Registrar, Conversion Agent or Custodian, and may approve any change in the office through which any Registrar or any Paying Agent or Conversion Agent acts, so long as such office is located in the United States. The term "**Registrar**" includes any co-registrar; the term "**Paying Agent**" includes any additional paying agent; and the term "**Conversion Agent**" includes any additional conversion agent.

The Company shall enter into an appropriate agency agreement with any Securities Agent not a party to this Indenture. Such agency agreement shall implement the provisions of this Indenture that relate to such Securities Agent. The Company shall notify the Trustee of the name and address of any Securities Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such.

The Company initially appoints the Trustee as Paying Agent, Registrar, Conversion Agent and Custodian.

2.04 **PAYING AGENT TO HOLD MONEY IN TRUST.**

Each Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all moneys held by the Paying Agent for the payment of the Securities, and shall notify the Trustee of any Default by the Company in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds so paid by it. Upon payment over to the Trustee, the Paying Agent shall have no further liability for such money. If the Company acts as Paying Agent, it shall segregate and hold as a separate trust fund all money held by it as Paying Agent.

2.05 **HOLDER LISTS.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish, or shall cause to be furnished, to the Trustee before each Interest Payment Date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Holders appearing in the security register of the Registrar.

2.06 **TRANSFER AND EXCHANGE.**

Subject to **Sections 2.15** and **2.16**, where Securities are presented to the Registrar with a request to register their transfer or to exchange them for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transaction are met. To permit registrations of transfer and exchanges, the Trustee shall authenticate Securities at the Registrar's request or upon the Trustee's receipt of a Company Order therefor. The Company, the Registrar or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security for which the Holder has delivered, and not validly withdrawn, a Purchase Notice in accordance with this Indenture, except (i) if the Company defaults in the payment of the Fundamental Change Repurchase Price or (ii) with respect to the portion of Securities not being repurchased. In the event of any Optional Redemption in part, the Company shall not be required to register the transfer of exchange of any Security so selected for Optional Redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

No service charge shall be made for any transfer, exchange or conversion of Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge that may be imposed in connection with any transfer, exchange or

conversion of Securities, other than exchanges pursuant to **Sections 2.07, 2.10**, **3.05**, **9.04** or **10.02**, not involving any transfer.

2.07 **REPLACEMENT SECURITIES.**

If the Holder of a Security claims that the Security has been mutilated, lost, destroyed or stolen, the Company shall issue and the Trustee shall authenticate, at the Holder's expense, a replacement Security upon surrender to the Trustee of the mutilated Security, or upon delivery to the Trustee of evidence of the mutilation, loss, destruction or theft of the Security satisfactory to the Trustee and the Company. In the case of a mutilated, lost, destroyed or stolen Security, if required by the Trustee or the Company, indemnity (including in the form of a bond) must be provided by the Holder that is reasonably satisfactory to the Trustee and the Company to indemnify and hold harmless the Company, the Trustee or any Securities Agent from any loss that any of them may suffer if such Security is replaced.

In case any such mutilated, lost, destroyed or stolen Security has become due and payable, the Company in its discretion may, instead of issuing a new Security, pay the amounts due in respect of such Security as provided hereunder.

Every replacement Security is an additional obligation of the Company only as provided in **Section 2.08**.

2.08 **OUTSTANDING SECURITIES.**

Securities outstanding at any time are all the Securities authenticated by the Trustee except for those converted, those cancelled by it, those delivered to it for cancellation and those described in this **Section 2.08** as not outstanding. Except to the extent provided in **Section 2.09**, a Security does not cease to be outstanding because the Company or one of its Subsidiaries or Affiliates holds the Security.

If a Security is replaced pursuant to **Section 2.07**, it ceases to be outstanding unless the Trustee receives proof satisfactory to it, or a court holds, that the replaced Security is held by a protected purchaser.

If the Paying Agent (in the case of a Paying Agent other than the Company) holds on a Fundamental Change Repurchase Date, Redemption Date or Maturity Date money sufficient to pay the aggregate Fundamental Change Repurchase Price, Redemption Price or principal amount (plus accrued and unpaid interest, if any) as the case may be, with respect to all Securities to be repurchased, redeemed or paid on such Fundamental Change Repurchase Date, Redemption Date or Maturity Date, as the case may be, in each case, payable as herein provided on such Fundamental Change Repurchase Date, Redemption Date or Maturity Date, then (unless there shall be a Default in the payment of such aggregate Fundamental Change Repurchase Price, Redemption Price or principal amount, or of such accrued and unpaid interest), except as otherwise provided herein, then on and after such date such Securities shall be deemed to be no longer outstanding, interest on such Securities shall cease to accrue, and such Securities shall be deemed to be paid whether or not such Securities are delivered to the Paying Agent. Thereafter, all rights of the Holders of such Securities shall terminate with respect to such Securities, other than the right to receive the Fundamental Change Repurchase Price, Redemption Price or

principal amount, as the case may be, plus, if applicable, such accrued and unpaid interest, in accordance with this Indenture.

If a Security is converted in accordance with **Article X** then, from and after the time of such conversion on the Conversion Date, such Security shall cease to be outstanding, and interest, if any, shall cease to accrue on such Security unless there shall be a Default in the payment or delivery of the consideration payable and/or deliverable hereunder upon such conversion (except that any such Security will remain outstanding for the purpose of receiving any interest or other amounts due following such conversion as set forth in this Indenture).

2.09 **SECURITIES HELD BY THE COMPANY OR AN AFFILIATE.**

In determining whether the Holders of the required aggregate principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or any of its Subsidiaries or Affiliates shall be considered as though not outstanding, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be considered to be outstanding for purposes of this **Section 2.09** if the pledgee establishes, to the satisfaction of the Trustee, the pledgee's right so to concur with respect to such Securities and that the pledgee is not, and is not acting at the direction or on behalf of, the Company, any other obligor on the Securities, an Affiliate of the Company or an Affiliate of any such other obligor. In case of a dispute as to whether the pledgee has established the foregoing, any decision by the Trustee taken upon the advice of counsel shall provide full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to **Section 7.01** and **Section 7.02**, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are outstanding for the purpose of any such determination.

2.10 **TEMPORARY SECURITIES.**

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall, upon receipt of a Company Order therefor, authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee, upon receipt of a Company Order therefor, shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, each temporary Security shall in all respects be entitled to the same benefits under this Indenture as definitive Securities, and such temporary Security shall be exchangeable for definitive Securities in accordance with the terms of this Indenture.

2.11 **CANCELLATION.**

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent (if other than the Trustee) shall forward to the

Trustee any Securities surrendered to them by Holders for transfer, exchange, redemption, payment or conversion. Such Securities surrendered to the Trustee for cancellation may not be reissued or resold, and the Trustee shall promptly cancel all Securities surrendered for transfer, exchange, redemption, payment, conversion or cancellation in accordance with its customary procedures. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to **Article X**. All cancelled Securities held by the Trustee shall be disposed of in accordance with its customary procedure for the disposal of cancelled securities, and certification of such disposal shall be delivered by the Trustee to the Company, upon the Company's written request, unless the Company shall, by a Company Order, direct that cancelled Securities be returned to it.

2.12 **DEFAULTED INTEREST.**

If and to the extent the Company defaults in a payment of interest on the Securities, the Company shall pay in cash the defaulted interest in any lawful manner plus, to the extent not prohibited by applicable statute or case law, interest on such defaulted interest at the rate provided in the Securities. The Company may pay the defaulted interest (plus interest on such defaulted interest) to the Persons who are Holders on a subsequent special record date. The Company shall fix such special record date and payment date. At least fifteen (15) calendar days before the special record date, the Company shall mail to Holders and to the Trustee, in the form of an Officer's Certificate, a notice that states the special record date, payment date and amount of interest to be paid. Upon the due payment in full, interest shall no longer accrue on such defaulted interest pursuant to this **Section 2.12**.

2.13 **CUSIP NUMBERS.**

The Company in issuing the Securities may use one or more "CUSIP" numbers, and, if so, the Trustee shall use the CUSIP numbers in notices as a convenience to Holders; *provided*, *however*, that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of the CUSIP

numbers printed on the notice or on the Securities; and *provided further* that reliance may be placed only on the other identification numbers printed on the Securities, and the effectiveness of any such notice shall not be affected by any defect in, or omission of, such CUSIP numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

2.14 **DEPOSIT OF MONEYS.**

Prior to 11:00 A.M., New York City time, on each Interest Payment Date, the Maturity Date, any Redemption Date or any Fundamental Change Repurchase Date, the Company shall deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) money, in funds immediately available on such date, sufficient to make cash payments, if any, due on such Interest Payment Date, the Maturity Date, such Redemption Date or such Fundamental Change Repurchase Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such Interest Payment Date, the Maturity Date, such Redemption Date or such Fundamental Change Repurchase Date, as the case may be.

If any Interest Payment Date, the Maturity Date, any Redemption Date or any Fundamental Change Repurchase Date falls on a date that is not a Business Day, the payment due on such Interest Payment Date, the Maturity Date, such Redemption Date or such Fundamental Change Repurchase Date, as the case may be, shall be postponed until the next succeeding Business Day, and no interest or other amount shall accrue as a result of such postponement.

2.15 **BOOK-ENTRY PROVISIONS FOR GLOBAL SECURITIES.**

(A) The Global Securities initially shall (i) be registered in the name of the Depositary or the nominee of the Depositary, (ii) be delivered to the Trustee as custodian for the Depositary and (iii) bear legends as set forth in **Section 2.17**.

Members of, or participants in, the Depositary ("**Participants**") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(B) Transfers of Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. In addition, one or more Physical Securities shall be transferred to beneficial owners, as identified by the Depositary, in exchange for their beneficial interests in Global Securities only if (i) the Depositary notifies the Company that the Depositary is unwilling or unable to continue as depositary for any Global Security, or the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act, and, in either case, a successor Depositary is not appointed by the Company within ninety (90) days of such notice or cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the beneficial owner of the relevant Securities to issue Physical Securities.

(C) In connection with the transfer of a Global Security in its entirety to beneficial owners pursuant to **Section 2.15(B)**, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

(D) Any Physical Security delivered in exchange for an interest in a Global Security that bears the Security Private Placement Legend pursuant to **Section 2.15(B)** shall, except as otherwise provided by **Section 2.16**, bear the Security Private Placement Legend.

(E) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(F) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on the transfer of any interest in any Securities imposed under this Indenture or under applicable law (including any transfers between or among Participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(G) None of the Trustee, any Securities Agent or the Initial Purchaser shall have any responsibility for any actions taken or not taken by the Depositary.

2.16 **SPECIAL TRANSFER PROVISIONS.**

(A) Notwithstanding any other provisions of this Indenture, but except as provided in **Section 2.15(B)**, a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(B) Upon the transfer, exchange or replacement of Securities not bearing the Security Private Placement Legend, the Registrar or co-registrar shall deliver Securities that do not bear the Security Private Placement Legend. Upon the transfer, exchange or replacement of Securities bearing the Security Private Placement Legend, the Registrar or co-registrar shall deliver only Securities that bear the Security Private Placement Legend unless (i) the requested transfer is after the Resale Restriction Termination Date, (ii) there is delivered to the Trustee and the Company an opinion of counsel reasonably satisfactory to the Company and addressed to the Company to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (iii) such Security has been sold pursuant to an effective registration statement under the Securities

Act and the Holder selling such Securities has delivered to the Registrar or co-registrar a notice in the form of **Exhibit C** hereto. Upon any sale or transfer of a beneficial interest in the Securities in connection with which the Security Private Placement Legend will be removed in accordance with this Indenture, the Trustee shall increase the principal amount of the Global Security that does not constitute a Restricted Security by the principal amount of such sale or transfer and likewise reduce the principal amount of the Global Security that does constitute a Restricted Security.

(C) By its acceptance of any Security or share of Common Stock bearing the Security Private Placement Legend or the Common Stock Private Placement Legend, as the case may be, each holder thereof acknowledges the restrictions on transfer of such security set forth in this Indenture and in the Security Private Placement Legend or Common Stock Private Placement Legend, as applicable, and agrees that it shall transfer such security only as provided in this Indenture and as permitted by applicable law.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to **Section 2.15** or this **Section 2.16**. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(D) Any Securities or shares of Common Stock issued upon the conversion of Securities that are purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Securities or shares of Common Stock, as the case may be, no longer being Restricted Securities.

(E) The Company may, to the extent permitted by law, repurchase the Securities in the open market or by tender offer at any price or by private agreement without giving prior notice to Holders. Securities surrendered to the Trustee for cancellation may not be reissued or resold and shall be promptly cancelled pursuant to **Section 2.11**.

2.17 **RESTRICTIVE LEGENDS.**

(A) Each Global Security and Physical Security that constitutes a Restricted Security shall bear the legend (the "**Security Private Placement Legend**") as set forth in **Exhibit B-1A** on the face thereof until the later of (i) the date that is one year after the last date of original issuance of such Securities, or such shorter period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (ii) such later date, if any, as may be required by applicable law (such date, the "**Resale Restriction Termination Date**"). Each certificate representing shares of Common Stock, if any, issued upon conversion of any Security, shall, if such shares constitute Restricted Securities, shall bear the legend (the "**Common Stock Private Placement Legend**") as set forth in **Exhibit B-1B** on the face thereof until the Resale Restriction Termination Date. In no event shall the Trustee or any Securities Agent (if other than the Company) be responsible for determining or charged with knowledge of the Resale Restriction Termination Date. Upon request to remove any Security Private Placement Legend, the Trustee and Registrar shall receive and conclusively rely upon an Opinion of Counsel from the Company. The Company shall notify DTC of any such Resale Restriction Termination Date.

(B) Each Global Security shall also bear the legend as set forth in **Exhibit B-2**.

(C) So long as and to the extent that any Securities are represented by one or more Global Securities held by or on behalf of the Depositary only, the Company may cause the removal of the Security Private Placement Legend from such Securities at any time on or after the Resale Restriction Termination Date by:

(i) providing to the Trustee written notice stating that the Resale Restriction Termination Date has occurred and instructing the Trustee to remove the Security Private Placement Legend from such Securities;

(ii) providing to the Holders of such Securities written notice that the Security Private Placement Legends have been removed or deemed removed;

(iii) providing to the Trustee and the Depositary written notice to change the CUSIP number for the Securities to the applicable unrestricted CUSIP number; and

(iv) complying with any applicable procedures for delegending in accordance with Rule 144 under the Securities Act and applicable policies of the SEC;

whereupon the Security Private Placement Legends shall be removed from any Global Securities without any further action on the part of the Holders.

2.18 **RANKING.**

The indebtedness of the Company arising under or in connection with this Indenture and every outstanding Security issued under this Indenture from time to time constitutes and shall constitute a senior unsecured obligation of the Company, ranking equally with other existing and future senior unsecured indebtedness of the Company and ranking senior to any existing or future indebtedness of the Company that is expressly subordinated to the Securities.

III. REDEMPTION AND REPURCHASE

3.01 **OPTIONAL REDEMPTION**.

No sinking fund is provided for the Securities. The Securities shall not be redeemable by the Company prior to August 1, 2014. On or after August 1, 2014 and prior to the Maturity Date, the Company may redeem (an "**Optional Redemption**") for cash all or a portion of the Securities if the Closing Sale Price of the Common Stock exceeds 130% of the applicable Conversion Price of such Securities for at least twenty (20) Trading Days during any consecutive

thirty (30) Trading Day period (including the last Trading Day of such period) ending on the last Trading Day before the date on which the Company provides a Redemption Notice as set forth in **Section 3.02**, at a redemption price equal to 100% of the principal amount of the Securities to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date (the "**Redemption Price**") (unless the Redemption Date falls after a Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to Holders of record of such Securities on such Record Date, and the Redemption Price will be equal to 100% of the principal amount of the Securities to be redeemed); *provided* that the Company must make at least six semi-annual interest payments (including the interest payments on February 1, 2012 and August 1, 2014) in the full amount required hereunder before redeeming any Securities at its option.

3.02 **NOTICE OF OPTIONAL REDEMPTION; SELECTION OF SECURITIES.**

(A) In case the Company exercises its right to redeem all or, as the case may be, any part of the Securities pursuant to **Section 3.01**, it shall fix a date for redemption (each, a "**Redemption Date**") and it or, at its written request, along with an Officer's Certificate setting forth the notice information in **Section 3.02(C)**, received by the Trustee not less than sixty-five

(65) calendar days prior to the Redemption Date (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall mail or cause to be mailed a notice of such Optional Redemption (a "**Redemption Notice**") not less than fifty-five (55) nor more than seventy (70) calendar days prior to the Redemption Date to the Trustee, the Paying Agent and each Holder so to be redeemed as a whole or in part. If such Securities to be redeemed are in the form of Global Securities, the delivery of any Redemption Notice pursuant to this paragraph may be by electronic transmission in order to comply with applicable procedures of the Depositary.

(B) The Redemption Notice, if mailed (or otherwise delivered) in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice by mail (or otherwise) or any defect in the Redemption Notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

(C) Each Redemption Notice shall specify:

(i) the Redemption Date (which must be a Business Day);

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security, and that interest thereon, if any, shall cease to accrue on and after said date;

(iv) that Holders may surrender their Securities for conversion at any time prior to the close of business on the Business Day immediately preceding the Redemption Date;

(v) the procedures a converting Holder must follow to convert its Securities and the settlement method and Specified Cash Amount, if applicable;

(vi) the Conversion Rate;

(vii) the CUSIP number or numbers, as the case may be, of the Securities;

(viii) in case any Security is to be redeemed in part only, the portion of the principal amount thereof to be redeemed, and that on and after the Redemption Date, upon surrender of such Security, a new Security in principal amount equal to the unredeemed portion thereof shall be issued.

Any Redemption Notice shall be irrevocable.

(D) If fewer than all of the outstanding Securities are to be redeemed, the Trustee shall select the Securities or portions thereof of a Global Security or the Physical Securities to be redeemed (in principal amounts of $1,000 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee considers to be fair and appropriate (including methodology utilized

by DTC). If any Security selected for partial redemption is submitted for conversion in part after such selection, the portion of the Security submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption.

3.03 **PAYMENT OF SECURITIES CALLED FOR REDEMPTION.**

(A) If any Redemption Notice has been given in respect of the Securities in accordance with **Section 3.02**, the Securities shall become due and payable on the Redemption Date at the applicable Redemption Price.

(B) Prior to the open of business on the Redemption Date, the Company shall deposit with the Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Securities to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Securities to be redeemed shall be made on the Redemption Date for such Securities.

The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

3.04 **RESTRICTIONS ON REDEMPTION.**

Notwithstanding anything herein to the contrary, except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price, there shall be no redemption of any Securities pursuant to Sections **3.01**, **3.02** and **3.03** on any date if, on such date, the principal amount of the Securities shall have been accelerated in accordance with this Indenture and such acceleration shall not have been rescinded on or prior to such date in accordance with this Indenture.

3.05 **REPURCHASE AT OPTION OF HOLDER UPON A FUNDAMENTAL CHANGE.**

(A) If a Fundamental Change occurs, each Holder of Securities shall have the right (the "**Fundamental Change Repurchase Right**"), at such Holder's option, to require the Company to repurchase (a "**Repurchase Upon Fundamental Change**") all of such Holder's Securities (or any portion thereof in integral multiples of $1,000 in principal amount), on a date selected by the Company (the "**Fundamental Change Repurchase Date**"), which shall be no later than thirty five (35) days, nor earlier than twenty (20) days, after the date the Fundamental Change Notice is mailed (or otherwise delivered) in accordance with **Section 3.05(B)**, at a price, payable in cash, equal to one hundred percent (100%) of the principal amount of the Securities (or portions thereof) to be so repurchased, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), upon:

(i) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, no later than the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, of a Purchase Notice, in the

form set forth in the Securities or any other form of written notice substantially similar thereto, in each case, duly completed and signed, with appropriate signature guarantee, stating:

(a) the certificate numbers of the Securities that the Holder shall deliver to be repurchased, if such Securities are Physical Securities;

(b) the principal amount of Securities to be repurchased, which must be $1,000 or an integral multiple thereof; and

(c) that such principal amount of Securities are to be repurchased pursuant to the terms and conditions specified in this **Section 3.05**; and

(ii) delivery to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice, at any time after the delivery of such Purchase Notice, of such Securities (together with all necessary endorsements) with respect to which the Fundamental Change Repurchase Right is being exercised;

provided, *however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the full amount of interest due on that Interest Payment Date shall be payable on that Interest Payment Date to the Holder of record of such Securities at the close of business on such Record Date (without any surrender of such Securities by such Holder), and the Fundamental Change Repurchase Price shall not include any accrued but unpaid interest.

If such Securities are in the form of Global Securities, the delivery of any Securities, Purchase Notice, Fundamental Change Notice or notice of withdrawal pursuant to the second immediately succeeding paragraph shall comply with applicable procedures of the Depositary.

Upon delivery of any Physical Securities to the Company (if it is acting as its own Paying Agent) or such Paying Agent, such Holder shall be entitled to receive, upon request, from the Company or such Paying Agent, as the case may be, a nontransferable receipt of deposit evidencing such delivery.

Notwithstanding anything herein to the contrary, any Holder that has delivered the Purchase Notice contemplated by this **Section 3.05(A)** to the Company (if it is acting as its own Paying Agent) or to a Paying Agent designated by the Company for such purpose in the Fundamental Change Notice shall have the right to withdraw such Purchase Notice by delivery, at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (or, if there shall be a Default in the payment of the Fundamental Change Repurchase, at any time during which such Default is continuing), of a written notice of withdrawal to the Company (if acting as its own Paying Agent) or the Paying Agent, which notice shall contain the information specified in **Section 3.05(B)(x)**.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

(B) Within ten (10) days after the occurrence of a Fundamental Change, the Company shall mail, or cause to be mailed, to all Holders of the Securities at their addresses shown in the register of the Registrar, and to beneficial owners as required by applicable law, a notice (the "**Fundamental Change Notice**") of the occurrence of such Fundamental Change and the Fundamental Change Repurchase Right arising as a result thereof. The Company shall deliver a copy of the Fundamental Change Notice to the Trustee and shall publicly release, through a reputable national newswire service, such Fundamental Change Notice. Each Fundamental Change Notice shall state:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the Fundamental Change Repurchase Date;

(iv) the last date on which a Holder may exercise the Fundamental Change Repurchase Right, which shall be the Business Day immediately preceding the Fundamental Change Repurchase Date;

(v) the Fundamental Change Repurchase Price;

(vi) the names and addresses of the Paying Agent and the Conversion Agent;

(vii) the procedures that a Holder must follow to exercise the Fundamental Change Repurchase Right;

(viii) that the Fundamental Change Repurchase Price for any Security as to which a Purchase Notice has been given and not withdrawn shall be paid as promptly as practicable, but in no event after the later of such Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the Security (together with all necessary endorsements); *provided*, *however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the accrued and unpaid interest, if any, to, but excluding, such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date (without any surrender of such Securities by such Holder) and the Fundamental Change Repurchase Price shall not include any accrued and unpaid interest;

(ix) that, except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, on and after such Fundamental Change Repurchase Date (unless there shall be a Default in the payment of the Fundamental Change Repurchase Price), interest on Securities subject to Repurchase Upon Fundamental Change shall cease to accrue, and all rights of the Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, the Fundamental Change Repurchase Price;

(x) that a Holder shall be entitled to withdraw its election in the Purchase Notice prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, by means of a letter or telegram, telex or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth (I) the name of such Holder, (II) a statement that such Holder is withdrawing its election to have Securities purchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change, (III) the certificate numbers of such Securities to be so withdrawn, if such Securities are Physical Securities, (IV) the principal amount of the Securities of such Holder to be so withdrawn, which amount must be $1,000 or an integral multiple thereof and (V) the principal amount, if any, of the Securities of such Holder that remain subject to the Purchase Notice delivered by such Holder in accordance with this **Section 3.05**, which amount must be $1,000 or an integral multiple thereof; *provided*, *however*, that if there shall be a Default in the payment of the Fundamental Change Repurchase Price, a Holder shall be entitled to withdraw its election in the Purchase Notice at any time during which such Default is continuing;

(xi) the Conversion Rate and any adjustments to the Conversion Rate that will result from such Fundamental Change;

(xii) that Securities with respect to which a Purchase Notice is given by a Holder may be converted pursuant to **Article X**, if otherwise convertible, only if such Purchase Notice has been withdrawn in accordance with this **Section 3.05**; and

(xiii) the CUSIP number or numbers, as the case may be, of the Securities.

At the Company's request, upon prior notice reasonably acceptable to the Trustee, the Trustee shall mail such Fundamental Change Notice in the Company's name and at the Company's expense; *provided*, *however*, that the form and content of such Fundamental Change Notice shall be prepared by the Company.

No failure of the Company to give a Fundamental Change Notice shall limit any Holder's right pursuant hereto to exercise a Fundamental Change Repurchase Right.

(C) Subject to the provisions of this **Section 3.05**, the Company shall pay, or cause to be paid, the Fundamental Change Repurchase Price with respect to each Security as to which the Fundamental Change Repurchase Right shall have been exercised to the Holder thereof as promptly as practicable, but in no event later than the later of the Fundamental Change Repurchase Date and the time of book-entry transfer or when such Security is surrendered to the Paying Agent (together with all necessary endorsements); *provided*, *however*, that if such Fundamental Change Repurchase Date is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, then the accrued and unpaid interest, if any, to, but excluding, such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date and the Fundamental Change Repurchase Price shall not include any accrued and unpaid interest.

(D) The Company shall, in accordance with **Section 2.14,** deposit with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) money, in funds immediately available on the Fundamental Change Repurchase Date, sufficient to pay the Fundamental Change Repurchase Price upon Repurchase Upon Fundamental Change for all of the Securities that are to be repurchased by the Company on such Fundamental Change Repurchase Date pursuant to a Repurchase Upon Fundamental Change. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

(E) Once the Fundamental Change Notice and the Purchase Notice have been duly given in accordance with this **Section 3.05**, the Securities to be repurchased pursuant to a Repurchase Upon Fundamental Change shall, on the Fundamental Change Repurchase Date, become due and payable in accordance herewith, and, on and after such date (unless there shall be a Default in the payment of the Fundamental Change Repurchase Price), except as

otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, such Securities shall cease to bear interest (whether or not book-entry transfer of the Securities has been made or the Securities have been delivered to the Paying Agent), and all rights of the relevant Holders of such Securities shall terminate, other than the right to receive, in accordance herewith, such consideration and any other applicable rights under those sections set forth in the proviso in **Section 8.01**.

(F) Securities with respect to which a Purchase Notice has been duly delivered in accordance with this **Section 3.05** may be converted pursuant to **Article X**, if otherwise convertible, only if such Purchase Notice has been withdrawn in accordance with this **Section 3.05**.

(G) If any Security shall not be paid upon book-entry transfer or surrender thereof for Repurchase Upon Fundamental Change, the principal of, and accrued and unpaid interest on, such Security shall, until paid, bear interest, payable in cash, at the rate borne by such Security on the principal amount of such Security, and such Security shall be convertible pursuant to **Article X** if any Purchase Notice with respect to such Security is withdrawn pursuant to this **Section 3.05**.

(H) Any Security that is to be submitted for Repurchase Upon Fundamental Change only in part shall be delivered pursuant to this **Section 3.05** (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or its attorney duly authorized in writing, with a medallion guarantee), and the Company shall promptly execute, and the Trustee shall promptly authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not duly submitted for Repurchase Upon Fundamental Change.

(I) Notwithstanding anything herein to the contrary, except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price, there shall be no purchase of any Securities pursuant to this **Section**

3.05 on any date if, on such date, the principal amount of the Securities shall have been accelerated in accordance with this Indenture and such acceleration shall not have been rescinded on or prior to such date in accordance with this Indenture. The Paying Agent shall promptly return to the respective Holders thereof any Securities held by it during the continuance of such an acceleration.

(J) In connection with any Repurchase Upon Fundamental Change, the Company shall, to the extent applicable (i) comply with the provisions of Rule 13e-4 and Regulation 14E under the Exchange Act and all other applicable laws; (ii) file a Schedule TO or any other schedules required under the Exchange Act or any other applicable laws; and (iii) otherwise comply with all applicable United States federal and state securities laws in connection with any offer by the Company to purchase the Securities.

(K) To the extent the Securities are held through the Depositary, notices to Holders may be transmitted electronically in order to comply with the Depositary's procedures and need not be mailed.

IV. COVENANTS

4.01 PAYMENT OF SECURITIES.

The Company shall pay all amounts due with respect to the Securities on the dates and in the manner provided in the Securities and this Indenture. All such amounts shall be considered paid on the date due if the Paying Agent holds (or, if the Company is acting as Paying Agent, the Company has segregated and holds in trust in accordance with **Section 2.04**) on that date money sufficient to pay the amount then due with respect to the Securities (unless there shall be a Default in the payment of such amounts to the respective Holder(s)). The Company shall pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Securities, which amounts shall be paid (A) in the case of a Global Security, by wire transfer of immediately available funds to the account designated by the Depositary or its nominee; (B) in the case of a Physical Security by a Holder of more than five million dollars ($5,000,000) in aggregate principal amount of Securities, by wire transfer of immediately available funds to the account specified by such Holder or, if such Holder does not specify an account, by mailing a check to the address of such Holder set forth in the register of the Registrar; and (C) in the case of a Physical Security that is held by a Holder of five million dollars ($5,000,000) or less in aggregate principal amount of Securities, by mailing a check to the address of such Holder set forth in the register of the Registrar.

The Company shall pay, in cash, interest on any overdue amount (including, the Redemption Price, the Fundamental Change Repurchase Price, principal and, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities.

4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company shall maintain, or cause to be maintained, an office or agency located in the United States (which may be an office of the Trustee or an Affiliate of the Trustee, Registrar

or co-registrar) where Securities may be surrendered for registration of transfer or exchange, payment or conversion. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain, or fail to cause to maintain, any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the Corporate Trust Office of the Trustee. The Company shall maintain, or cause to be maintained, in the United States, an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served, *provided* that, unless otherwise designated by written notice to the Trustee, such office or agency shall be at the principal office of the Company located in the United States.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner

relieve the Company of its obligation to maintain an office or agency in the United States, for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as an agency of the Company in accordance with **Section 2.03**.

4.03 **RULE 144A INFORMATION AND ANNUAL REPORTS.**

(A) At any time when the Company is not subject to the reporting requirements of the Exchange Act, the Company shall promptly provide to the Trustee and shall, upon request, provide to any Holder, beneficial owner or prospective purchaser of Securities or any shares of Common Stock issued upon conversion of any Securities, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Securities or shares of Common Stock pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial holder of such Securities or shares of Common Stock may reasonably request in writing to the extent required from time to time to enable such Holder or beneficial holder to sell its Securities or shares of Common Stock in accordance with Rule 144A, as such rule may be amended from time to time.

(B) The Company shall deliver to the Trustee, no later than the time such report is required to be filed with the SEC pursuant to the Exchange Act, a copy of each report the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act); *provided*, *however*, that each such report shall be deemed to be so delivered to the Trustee if the Company files such report with the SEC through the SEC's EDGAR database no later than the time such report is required to be filed with the SEC pursuant to the Exchange Act (taking into account any applicable grace periods provided thereunder).

(C) The Company shall promptly furnish to the Trustee copies of its annual report to shareholders, containing audited financial statements, and any other financial reports that it furnishes to its shareholders.

(D) Delivery of such reports, information and documents to the Trustee pursuant to this **Section 4.03** is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificates).

4.04 **COMPLIANCE CERTIFICATE.**

The Company shall deliver to the Trustee, within one hundred twenty (120) calendar days after the end of each fiscal year of the Company, a certificate of two (2) or more Officers stating whether or not the signatories to such Officer's Certificate have actual knowledge of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Securities. If such signatories do know of any such Default or Event of Default, then such certificate shall describe the Default or Event of Default and its status.

4.05 **STAY, EXTENSION AND USURY LAWS.**

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities; and the Company (in each case, to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

4.06 **CORPORATE EXISTENCE.**

Subject to **Article V**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with its organizational documents, and the rights (charter and statutory) of the Company; *provided*, *however*, that the Company shall not be required to preserve any such right if in the good faith judgment of the Board of Directors such preservation or existence is no longer necessary for the conduct of business of the Company.

4.07 **NOTICE OF DEFAULT.**

Upon the Company becoming aware of the occurrence of any Default or Event of Default, the Company shall give prompt written notice of such Default or Event of Default, and any remedial action proposed to be taken, to the Trustee.

4.08 **FURTHER INSTRUMENTS AND ACTS.**

Upon request of the Trustee, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

4.09 **ADDITIONAL INTEREST.**

(A) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Securities, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates (as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities), the Company shall pay Additional Interest on the Securities at a rate of 0.50% per annum of the principal amount of Securities outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates.

(B) If, and for so long as, the Security Private Placement Legend has not been removed from the Securities in accordance with **Section 2.16(B)** or **Section 2.17**, the Securities are assigned a restricted CUSIP number or the Securities are not otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Securities), as of the 365th day after the last date of original issuance of the Securities, the Company shall pay Additional Interest on the Securities at a rate of 0.50% per annum of the principal amount of Securities outstanding for each day after the 365th day after the last date of original issuance of the Securities until (i) the Security Private Placement Legend has been removed in accordance with **Section 2.16(B)** or **Section 2.17**, (ii) the Securities are assigned an unrestricted CUSIP number and (iii) the Securities are otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities).

(C) Additional Interest payable in accordance with **Sections 4.09(A)** and **4.09(B)** shall be payable in arrears on each Interest Payment Date for the Securities following accrual in the same manner as regular interest on the Securities and shall be in addition to, not in lieu of, any Additional Interest that may accrue under **Section 6.02(B)** as the sole remedy relating to the Company's failure to comply with **Section 4.03(B)**.

(D) In the event that the Company is required to pay Additional Interest to Holders of Securities (whether pursuant to this **Section 4.09** or **Section 6.02(B))**, the Company shall provide written notice ("**Additional Interest Notice**") to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) calendar days (or such shorter period as may be acceptable to the Trustee) prior to the proposed payment date for the Additional Interest. Each Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the amount of Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

V. SUCCESSORS

5.01 WHEN COMPANY MAY MERGE, ETC.

The Company shall not consolidate with, or merge with or into, or sell, transfer, lease, convey or otherwise dispose of all or substantially all of the consolidated property or assets of the Company to another Person, whether in a single transaction or series of related transactions, unless (i) the Company is the continuing corporation or the resulting, surviving or transferee Person (if not the Company) is a corporation organized and existing under the laws of the United States of America, any state of the United States of America or the District of Columbia, and such Person (if not the Company) assumes by supplemental indenture all of the obligations of the Company under the Securities and this Indenture and (ii) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall exist.

For purposes of this **Section 5.01**, the sale, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of one or more Subsidiaries of the Company to another Person, which properties or assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties or assets of the Company on a consolidated basis, shall be deemed to be the sale, transfer, lease, conveyance or other disposition of all or substantially all of the consolidated properties or assets of the Company to another Person.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officer's Certificate to the foregoing effect and an Opinion of Counsel (which may rely upon such Officer's Certificate as to the absence of Defaults and Events of Default) stating that the proposed transaction and such supplemental indenture shall, upon consummation of the proposed transaction, comply with this Indenture.

5.02 SUCCESSOR SUBSTITUTED.

In case of any such consolidation, merger or any sale, transfer, conveyance or other disposition (but not any lease) of all or substantially all of the consolidated property or assets of the Company and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Securities, the due and punctual payment of the Fundamental Change Repurchase Price with respect to all Securities repurchased on each Fundamental Change Repurchase Date, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Securities and the due and punctual performance of all of the covenants and conditions of this Indenture and the Securities to be performed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Securities that

previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof. In the event of any such consolidation, merger or any sale, transfer, conveyance or other disposition (but not in the case of a lease), upon compliance with this **Article V** the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this **Article V** may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Securities and its obligations under this Indenture shall terminate.

In case of any such consolidation, merger or any sale, transfer, lease, conveyance or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

VI. DEFAULTS AND REMEDIES

6.01 **EVENTS OF DEFAULT.**

An "**Event of Default**" occurs if:

(i) the Company fails to pay the principal or the Fundamental Change Repurchase Price of any Security when the same becomes due and payable, whether on the Maturity Date, upon Optional Redemption, on a Fundamental Change Repurchase Date with respect to a Fundamental Change, upon acceleration or otherwise;

(ii) the Company fails to pay an installment of interest on any Security when due, if such failure continues for thirty (30) days after the date when due;

(iii) the Company fails to comply with its conversion obligations to deliver the cash and/or Common Stock due upon exercise of a Holder's conversion right pursuant hereto;

(iv) the Company fails to timely provide notice pursuant to, and in accordance with, **Section 3.05(B)**, **Section 10.01(B)(iv)**, **Section 10.01(B)(v)** or **Section 10.15(E)**;

(v) the Company fails to comply with its obligations under **Article V**;

(vi) the Company fails to comply with any other term, covenant or agreement contained in the Securities or this Indenture and such failure continues for the period, and after the notice, specified in the last paragraph of this **Section 6.01**;

(vii) the Company or any of its Subsidiaries defaults in the payment in an aggregate amount of ten million dollars ($10,000,000) or more when due, after the

expiration of any applicable grace period, of principal of, or premium, if any, or interest on, indebtedness for money borrowed, or acceleration of the indebtedness of the Company or any of its Subsidiaries for money borrowed in an aggregate principal amount of ten million dollars ($10,000,000) or more so that it becomes due and payable before the date on which it would otherwise become due and payable and such default is not cured or waived, or such acceleration is not rescinded for the period, and after the notice, specified in the last paragraph of this **Section 6.01**;

(viii) the Company or any of its Subsidiaries fails, within thirty (30) days, to pay, bond or otherwise discharge any final, non-appealable judgments or orders for the payment of money the total uninsured amount of which for the Company or any of its Subsidiaries exceeds ten million dollars ($10,000,000), which are not stayed on appeal;

(ix) the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, pursuant to, or within the meaning of, any Bankruptcy Law, insolvency law, or other similar law now or hereafter in effect or otherwise, either:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company in an involuntary case or proceeding, or adjudicates the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company insolvent or bankrupt,

(B) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company for all or substantially all of the consolidated property of the Company or any such Significant Subsidiary or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company, as the case may be, or

(C) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company,

and, in the case of each of the foregoing **clauses (A), (B) and (C)** of this **Section 6.01(x)**, the order or decree remains unstayed and in effect for at least sixty (60) consecutive days.

The term "**Bankruptcy Law**" means Title 11, U.S. Code or any similar U.S. Federal or State law for the relief of debtors, or any analogous foreign law applicable to the Company or its Subsidiaries, as the case may be. The term "**Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A Default under **clause (vi)** or **(vii)** above shall not be an Event of Default until (I) the Trustee notifies the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee in writing, of the Default and (II) the Default is not cured within sixty (60) days in the case of **clause (vi)**, or within thirty (30) days in the case of **clause (vii)**, after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that the notice is a "**Notice of Default**." If the Holders of at least twenty five percent (25%) in aggregate principal amount of the outstanding Securities request the Trustee to give such notice on their behalf, the Trustee shall do so. When a Default is cured, it ceases to exist for all purposes under this Indenture.

6.02 **ACCELERATION.**

(A) If an Event of Default (excluding an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** with respect to the Company, but including an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) has occurred and is continuing, either the Trustee by notice to the Company, or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding by notice to the Company and the Trustee, may declare the Securities to be immediately due and payable in full. Upon such declaration, the principal of, and any accrued and unpaid interest on, all Securities shall be due and payable immediately. If an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** with respect to the Company (excluding, for purposes of this sentence, an Event of Default specified in **Section 6.01(ix)** or **6.01(x)** solely with respect to a Significant Subsidiary of the Company or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company) occurs, the principal of, and accrued and unpaid interest on, all the Securities shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if (A) the rescission would not conflict with any order or decree, (B) all existing Events of Default, except the non-payment of principal or interest that has become due solely because of the acceleration, have been cured or waived and (C) all amounts due to the Trustee under **Section 7.07** have been paid.

(B) Notwithstanding the foregoing, the sole remedy for an Event of Default relating to failure to comply with **Section 4.03(B)** shall, for the first 180 days immediately following the occurrence of such an Event of Default, consist exclusively of the right to receive Additional

Interest on the Securities at a rate per year equal to (i) 0.25% of the outstanding principal amount of Securities for each day during the ninety (90) day period following, and including, the occurrence of such Event of Default during which such Event of Default continues and (ii) 0.50% of the outstanding principal amount of Securities for each day during the ninety (90) day period beginning on, and including, the ninety-first (91st) day following the occurrence of such Event of Default during which such Event of Default continues, in each case, payable in the same manner and at the same time as the stated interest payable on the Securities. Such Additional Interest shall accrue on all outstanding Securities from, and including, the date on which such Event of Default first occurs to, and including, the 180th day thereafter (or such earlier date on which such Event of Default shall have been cured or waived). Additional Interest payable pursuant to this **Section 6.02(B)** shall be in addition to, not in lieu of, any Additional Interest payable pursuant to **Section 4.09(A)** and **Section 4.09(B)**. In addition to the accrual of Additional Interest pursuant to this **Section 6.02(B)**, on and after the 181st day immediately following an Event of Default relating to a failure to comply with **Section 4.03(B)**, such Additional Interest shall cease to accrue and, if such Event of Default has not been cured or waived prior to such 181st day, the Securities shall be subject to acceleration as provided above. The provisions of this **Section 6.02(B)** shall not affect the rights of Holders in the event of the occurrence of any other Event of Default.

6.03 **OTHER REMEDIES.**

Notwithstanding any other provision of this Indenture, if an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of amounts due with respect to the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative.

6.04 **WAIVER OF PAST DEFAULTS.**

Subject to **Sections 6.07** and **9.02**, the Holders of a majority in aggregate principal amount of the Securities then outstanding may, by notice to the Trustee, waive any past Default or Event of Default and its consequences, other than a Default or Event of Default (A) in the payment of the principal of, or interest on, any Security, or in the payment of the Redemption Price or Fundamental Change Repurchase Price, (B) arising from a failure by the Company to convert any Securities in accordance with this Indenture or (C) in respect of any provision of this Indenture or the Securities which, under **Section 9.02**, cannot be modified or amended without the consent of the Holder of each outstanding Security affected. When a Default or an Event of Default is waived, it is cured and ceases to exist for all purposes under this Indenture.

6.05 **CONTROL BY MAJORITY.**

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity reasonably satisfactory to it; *provided* that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

6.06 **LIMITATION ON SUITS.**

Except with respect to any proceeding instituted in accordance with **Section 6.07**, a Holder shall not have any right to institute any proceeding under this Indenture, or for the appointment of a receiver or a trustee, or for any other remedy under this Indenture unless:

(i) the Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding make a written request to the Trustee to pursue the remedy;

(iii) the Holder or Holders offer and, if requested, provide the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to or of the Trustee in connection with pursuing such remedy; and

(iv) the Trustee fails to comply with the request within sixty (60) days after receipt of such notice, request and offer of indemnity, and during such sixty (60) day period, the Holders of a majority in aggregate principal amount of the Securities then outstanding do not give the Trustee a direction that is inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

6.07 **RIGHTS OF HOLDERS TO RECEIVE PAYMENT AND TO CONVERT SECURITIES.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of all amounts (including any principal, interest, the Redemption Price or the Fundamental Change Repurchase Price) due with respect to the Securities, on or after the respective due dates as provided herein, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

In addition, notwithstanding any other provision of this Indenture, the right of any Holder to convert the Security in accordance with this Indenture and to receive the consideration due upon conversion, or to bring suit for the enforcement of such rights, shall not be impaired or affected without the consent of the Holder.

6.08 **COLLECTION SUIT BY TRUSTEE.**

If an Event of Default specified in **Section 6.01(i)** or **6.01(ii)** has occurred and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount due with respect to the Securities, including any unpaid and accrued interest.

6.09 **TRUSTEE MAY FILE PROOFS OF CLAIM.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, any predecessor Trustee and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties.

The Trustee may collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under **Section 7.07.**

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

6.10 **PRIORITIES.**

If the Trustee collects any money pursuant to this **Article VI**, it shall pay out the money in the following order:

First: to the Trustee for amounts due under **Section 7.07;**

Second: to Holders for all amounts due and unpaid on the Securities, without preference or priority of any kind, according to the amounts due and payable on the Securities; and

Third: the balance, if any, to the Company.

The Trustee, upon prior written notice to the Company, may fix a record date and payment date for any payment by it to Holders pursuant to this **Section 6.10**. At least fifteen (15) days before each such record date, the Trustee shall mail to each Holder and the Company a written notice that states such record date and payment date and the amount of such payment.

6.11 **UNDERTAKING FOR COSTS.**

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit other than the Trustee of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the

merits and good faith of the claims or defenses made by the party litigant. This **Section 6.11** does not apply to a suit by the Trustee, a suit by a Holder pursuant to **Section 6.07** or a suit by Holders of more than ten percent (10%) in aggregate principal amount of the outstanding Securities.

VII. TRUSTEE

7.01 DUTIES OF TRUSTEE.

(A) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of his or her own affairs.

(B) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith, willful misconduct or negligence on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(C) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 6.05**; and

(iii) this subsection **(C)** shall not be construed to limit the effect of subsection **(B)** of this **Section 7.01**.

(D) Every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this **Section 7.01**.

(E) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee shall be segregated from other funds as directed in writing by the Company or as required by law and shall be invested by the Trustee pursuant to the written instructions of the Company reasonably satisfactory to the Trustee.

(F) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(G) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this **Section 7.01**.

7.02 RIGHTS OF TRUSTEE.

(A) Subject to **Section 7.01**, the Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document; if, however, the Trustee shall determine to make such further inquiry or investigation, it shall be entitled during normal business hours to examine the relevant books, records and premises of the Company, personally or by agent or attorney upon reasonable prior notice, at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(C) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution.

(D) The Trustee may consult with counsel of its own selection, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(E) The Trustee may act through agents or attorneys and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(F) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its discretion, rights or powers conferred upon it by this Indenture.

(G) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in **Article IV**. In addition, the Trustee shall not be deemed to have knowledge of an Event of Default except any Default or Event of Default of which a Responsible Officer of the Trustee shall have (i) received at its Corporate Trust Office written notification of a default that is in fact a Default, and such notice references the Securities and this Indenture, or (ii) obtained actual knowledge. Delivery of reports, information and documents to the Trustee under **Article IV** (other than **Sections 4.04** and **4.07**) is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely on Officer's Certificates).

(H) The Trustee shall be under no obligation to exercise any of the rights or powers vested by this Indenture at the request or demand of any of the Holders pursuant to this Indenture unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or demand.

(I) The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(J) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(K) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

7.03 **INDIVIDUAL RIGHTS OF TRUSTEE.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights the Trustee would have if it were not Trustee. Any Securities Agent may do the same with like rights. The Trustee, however, must comply with **Sections 7.10** and **7.11.**

7.04 **TRUSTEE'S DISCLAIMER.**

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities; the Trustee shall not be accountable for the Company's use of the proceeds from the Securities; and the Trustee shall not be responsible for any statement in the Securities other than its certificate of authentication.

7.05 **NOTICE OF DEFAULTS.**

If a Default or Event of Default occurs and is continuing as to which the Trustee has received notice pursuant to the provisions of this Indenture, or as to which a Responsible Officer of the Trustee shall have actual knowledge, then the Trustee shall mail to each Holder a notice of the Default or Event of Default within thirty (30) days after receipt of such notice or after acquiring such knowledge, as applicable, unless such Default or Event of Default has been cured or waived; *provided*, *however*, that, except in the case of a Default or Event of Default in payment or delivery of any amounts due (including principal, interest, the Redemption Price, the Fundamental Change Repurchase Price or the consideration due upon conversion) with respect to any Security, the Trustee may withhold such notice if, and so long as it in good faith determines that, withholding such notice is in the best interests of the Holders.

7.06 **REPORTS BY TRUSTEE TO HOLDERS**

Within sixty (60) days after each November 1, beginning with November 1, 2011, the Trustee shall mail to each Holder if required by TIA § 313(a) a brief report dated as of such November 1 that complies with TIA § 313(a). In such event, the Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Holders shall be mailed by first class mail to the Company and filed by the Trustee with the SEC and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee of the listing or delisting of the Securities on or from any stock exchange.

7.07 **COMPENSATION AND INDEMNITY.**

The Company shall pay to the Trustee from time to time such compensation for its services as shall be agreed upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it pursuant to, and in accordance with, any provision hereof. Such expenses shall include the reasonable compensation and out-of-pocket expenses of the Trustee's agents and counsel.

The Company shall indemnify each of the Trustee, each predecessor Trustee and their respective agents for, and hold each of them harmless against, any and all loss, liability, damage, claim or expense (including the reasonable fees and expenses of counsel and taxes other than those based upon the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder or in connection with enforcing the provisions of this **Section 7.07,** including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other

Person) or liability in connection with the exercise or performance of any of its powers and duties hereunder. The Company need not pay for any settlement made without its consent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnification. The Company need not reimburse any expense or indemnify against any loss or liability that shall be determined to have been caused by the Trustee through the Trustee's own negligence, bad faith or willful misconduct.

To secure the Company's payment obligations in this **Section 7.07,** the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay amounts due on particular Securities.

The indemnity obligations of the Company with respect to the Trustee provided for in this **Section 7.07,** shall survive any resignation or removal of the Trustee and termination of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in **Section 6.01(ix)** or **(x)** occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

7.08 **REPLACEMENT OF TRUSTEE.**

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this **Section 7.08**.

The Trustee may resign by so notifying the Company in writing thirty (30) days prior to such resignation. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing and may appoint a successor Trustee with the Company's consent. The Company may remove the Trustee if:

(i) the Trustee fails to comply with **Section 7.10**;

(ii) the Trustee is adjudged a bankrupt or an insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with **Section 7.10**, the Company or any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in **Section 7.07**.

7.09 **SUCCESSOR TRUSTEE BY MERGER, ETC.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee, if such successor corporation is otherwise eligible (i) hereunder and (ii) under the TIA.

7.10 **ELIGIBILITY; DISQUALIFICATION.**

There shall at all times be a Trustee hereunder that (A) is an entity organized and doing business under the laws of the United States of America or of any state thereof or the District of Columbia, (B) is authorized under such laws to exercise corporate trustee power, (C) is subject to supervision or examination by federal or state authorities and (D) has a combined capital and surplus of at least $50 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b). Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA § 310(b).

7.11 **PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.**

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

VIII. DISCHARGE OF INDENTURE

8.01 **TERMINATION OF THE OBLIGATIONS OF THE COMPANY.**

This Indenture shall cease to be of further effect, and the Trustee shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, if (a) either (i) all outstanding Securities (other than Securities replaced pursuant to **Section 2.07**) have been delivered to the Trustee for cancellation or (ii) all outstanding Securities have become due and payable on the Maturity Date, upon conversion, upon Optional Redemption or upon

Repurchase Upon Fundamental Change, and in either case the Company irrevocably deposits, prior to the applicable due date, with the Trustee or the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) cash or, in the case of conversion, cash and/or shares of

Common Stock, if any, sufficient to pay all amounts due on all outstanding Securities (other than Securities replaced pursuant to **Section 2.07**) on the Maturity Date, the relevant settlement date of any conversion, the Redemption Date or the Fundamental Change Repurchase Date, as the case may be; (b) the Company pays to the Trustee all other sums payable hereunder by the Company; (c) no Default or Event of Default with respect to the Securities shall exist on the date of such deposit under **clause (a)(ii)** above; (d) such deposit under **clause (a)(ii)** above shall not result in a breach or violation of, or constitute a Default or Event of Default under, this Indenture; and (e) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with; *provided*, *however*, that **Sections 2.02**, **2.03**, **2.04**, **2.05**, **2.06**, **2.07**, **2.08**, **2.09**, **2.15**, **2.16**, **2.17**, **3.05**, **4.01**, **4.02**, **4.05**, **4.09**, **7.07**, **7.08**, **7.10**, **7.10**, **7.11**, **13.01**, **13.08** and **13.13** and **Articles VIII, X, XI** and **XII** shall survive any discharge of this Indenture until such time as the Securities have been paid in full and there are no Securities outstanding.

8.02 **APPLICATION OF TRUST MONEY.**

The Trustee shall hold in trust all money deposited with it pursuant to **Section 8.01** and shall apply such deposited money through the Paying Agent and in accordance with this Indenture to the payment of amounts due on the Securities.

8.03 **REPAYMENT TO COMPANY.**

The Trustee and the Paying Agent shall promptly notify the Company of, and pay to the Company upon the request of the Company, any excess money held by them at any time. The Trustee or the Paying Agent, as the case may be, shall provide written notice to the Company of any money that has been held by it and has, for a period of two (2) years, remained unclaimed for the payment of the principal of, or any accrued and unpaid interest on, the Securities. The Trustee and the Paying Agent shall pay to the Company upon the written request of the Company any money held by them for the payment of the principal of, or any accrued and unpaid interest on, the Securities that remains unclaimed for two (2) years; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may, at the expense of the Company, cause to be published (in no event later than five (5) days after the Company requests repayment) once in a newspaper of general circulation in the City of New York or cause to be mailed to each Holder, notice stating that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication or mailing, any unclaimed balance of such money then remaining shall be repaid to the Company. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors, subject to applicable law, and all liability of the Trustee and the Paying Agent with respect to such money and payment shall, subject to applicable law, cease.

8.04 **REINSTATEMENT.**

If the Trustee or Paying Agent is unable to apply any money in accordance with **Sections 8.01** and **8.02** by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application,

the obligations of the Company under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to **Sections 8.01** and **8.02** until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with **Sections 8.01** and **8.02**; *provided*, *however*, that if the Company has made any payment of amounts due with respect to any Securities because of the reinstatement of its obligations, then the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

IX. **AMENDMENTS**

9.01 **WITHOUT CONSENT OF HOLDERS.**

The Company, with the consent of the Trustee, may amend or supplement this Indenture or the Securities without notice to or the consent of any Holder:

(i) to comply with **Section 5.01** or **Section 10.12**;

(ii) to secure or guarantee the obligations of the Company in respect of the Securities;

(iii) to provide for uncertificated Securities in addition to or in place of Physical Securities in accordance with **Section 2.15(B);**

(iv) to comply with any requirement of the SEC in connection with qualification of the Indenture under the TIA;

(v) to make any change that does not adversely affect the rights of any Holder;

(vi) to evidence and provide for the appointment of a successor Trustee in accordance with **Section 7.08**;

(vii) to add to the covenants of the Company described in this Indenture for the benefit of Holders or to surrender any right or power conferred upon the Company;

(viii) to make provision with respect to adjustments to the Conversion Rate as required by this Indenture or to increase the Conversion Rate in accordance with this Indenture; or

(ix) to issue Additional Securities.

In addition, the Company and the Trustee may enter into a supplemental indenture without the consent of Holders of the Securities to (i) cure any ambiguity, defect, omission or inconsistency in this Indenture in a manner that does not, individually or in the aggregate with all other changes, adversely affect the rights of any Holder in any material respect or (ii) to conform this Indenture or the Securities to the description thereof contained in the Offering Memorandum

under the heading "Description of notes," as supplemented by the related pricing term sheet dated July 26, 2011.

9.02 **WITH CONSENT OF HOLDERS.**

The Company may amend or supplement this Indenture or the Securities with the written consent of the Trustee and the Holders of at least a majority in aggregate principal amount of the outstanding Securities (including, without limitation, consents obtained from Holders in connection with a purchase of, or tender or exchange offer for, Securities). Subject to **Sections 6.04** and **6.07**, the Holders of a majority in aggregate principal amount of the outstanding Securities may, by notice to the Trustee, waive by consent (including, without limitation, consents obtained from Holders in connection with a purchase of, or tender or exchange offer for, Securities) compliance by the Company with any provision of this Indenture or the Securities without notice to any other Holder. Notwithstanding the foregoing or anything herein to the contrary, without the consent of the Holder of each outstanding Security affected, an amendment, supplement or waiver, including a waiver pursuant to **Section 6.04**, may not:

(i) change the stated maturity of the principal of, or the payment date of any installment of interest on, any Security;

(ii) reduce the principal amount of, or interest on, any Security;

(iii) reduce the amount of principal payable upon acceleration of the maturity of any Security;

(iv) change the place, manner or currency of payment of principal of, or any interest on, any Security;

(v) impair the right to institute suit for the enforcement of any delivery or payment on, or with respect to, or due upon the conversion of, any Security;

(vi) modify, in a manner adverse to Holders, the provisions with respect to the right of Holders to require the Company to repurchase Securities upon the occurrence of a Fundamental Change pursuant to **Section 3.05** or Optional Redemption pursuant to **Section 3.01**;

(vii) modify the provisions of **Section 2.18** in a manner adverse to Holders;

(viii) adversely affect the right of Holders to convert their Securities in accordance with **Article X**;

(ix) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a modification to or amendment of any provision of this Indenture or the Securities;

(x) reduce the percentage in aggregate principal amount of outstanding Securities whose Holders must consent to a waiver of compliance with any provision of this Indenture or the Securities or a waiver of any Default or Event of Default;

(xi) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security;

(xii) modify the provisions of this Indenture with respect to modification and waiver (including waiver of a Default or an Event of Default), except to increase the percentage required for modification or waiver or to provide for the consent of each affected Holder.

Promptly after an amendment, supplement or waiver under **Section 9.01** or this **Section 9.02** becomes effective, the Company shall mail, or cause to be mailed, to Holders a notice briefly describing such amendment, supplement or waiver. Any failure of the Company to mail such notice shall not in any way impair or affect the validity of such amendment, supplement or waiver.

It shall not be necessary for the consent of the Holders under this **Section 9.02** to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

9.03 **REVOCATION AND EFFECT OF CONSENTS.**

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective with respect to the Securities, it shall bind every Holder unless such amendment, supplement or waiver makes a change that requires, pursuant to **Section 9.02**, the consent of each Holder affected. In that case, the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and, provided that notice of such amendment, supplement or waiver is reflected on a Security that evidences the same debt as the consenting Holder's Security, every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Nothing in this **Section 9.03** shall impair the Company's rights pursuant to **Section 9.01** to amend this Indenture or the Securities without the consent of any Holder in the manner set forth in, and permitted by, such **Section 9.01**.

9.04 **NOTATION ON OR EXCHANGE OF SECURITIES.**

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security as directed and prepared by the Company about the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

9.05 **TRUSTEE PROTECTED.**

The Trustee shall sign any amendment, supplemental indenture or waiver authorized pursuant to this **Article IX**; *provided*, *however*, that the Trustee need not sign any amendment, supplement or waiver authorized pursuant to this **Article IX** that adversely affects the Trustee's rights, duties, liabilities or immunities. The Trustee shall receive and conclusively rely upon an Opinion of Counsel as to legal matters and an Officer's Certificate as to factual matters that any supplemental indenture, amendment or waiver is permitted or authorized pursuant to this Indenture.

9.06 **EFFECT OF SUPPLEMENTAL INDENTURES.**

Upon the due execution and delivery of any supplemental indenture in accordance with this **Article IX**, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes, and, except as set forth in **Sections 9.02** and **9.03**, every Holder of Securities shall be bound thereby.

X. CONVERSION

10.01 **CONVERSION PRIVILEGE.**

(A) Subject to the provisions of **Section 3.01**, **Section 3.05** and **Section 10.02**, the Securities shall be convertible (i) prior to the close of business on the Business Day immediately preceding May 1, 2016, upon satisfaction of one or more of the conditions described in **Section 10.01(B)** and (ii) at any time from, and including, May 1, 2016 to, and including, the Business Day immediately preceding the Maturity Date, irrespective of the conditions described in **Section 10.01(B),** in each case, into cash, shares of Common Stock, or a combination thereof, as described in **Section 10.02**, in accordance with this **Article X**.

(B) (i) Prior to the close of business on the Business Day immediately preceding May 1, 2016, Holders may surrender their Securities for conversion at any time during any calendar quarter after the calendar quarter ending September 30, 2011 (and only during such calendar quarter), if the Closing Sale Price of the Common Stock for each of twenty (20) or more Trading Days in the thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter exceeds the Conversion Trigger Price in effect on the last Trading Day of the immediately preceding calendar quarter. The Board of Directors shall make appropriate adjustments to the Closing Sale Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Effective Date, the Ex-Date or the expiration date (in the case of a tender or exchange offer) of the event occurs, during the thirty (30) consecutive Trading Day period described in the immediately preceding sentence. The Company shall determine at the beginning of each calendar quarter after the calendar quarter ending September 30, 2011 whether the Securities are convertible as a result of the price of the Common Stock in accordance with this **Section 10.01(B)(i)** and, if the Company determines that the Securities are so convertible, it shall promptly send written notice to the Trustee and the Conversion Agent (if other than the Trustee) and so notify the Holders.

(ii) Prior to the close of business on the Business Day immediately preceding May 1, 2016, Holders may surrender their Securities for conversion at any time during the five (5) consecutive Business Days immediately after any five (5) consecutive Trading Day period (the "**Security Measurement Period**") in which the Trading Price per $1,000 principal amount of Securities, as determined following a request by a Holder of Securities in accordance with the procedures set forth in this **Section 10.01(B)(ii)**, for each Trading Day in such Security Measurement Period was equal to or less than 98% of the Conversion Value of the Securities on such Trading Day (the "**Trading Price Condition**"). The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this **Section 10.01(B)(ii)** and the definition of Trading Price set forth in this Indenture. If the Company is not then acting as the Bid Solicitation Agent, the Company shall provide written notice to the Bid Solicitation Agent of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price of the Securities in accordance with this **Section 10.01(B)(ii)** unless requested by the Company, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price of the Securities in accordance with this **Section 10.01(B)(ii)**) unless a Holder of Securities then outstanding provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Securities would be equal to or less than 98% of the Conversion Value of the Securities. At such time, the Company shall instruct the Bid Solicitation Agent (if other than the Company) to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price of the Securities for each of the next five Trading Days and on each succeeding Trading Day until the Trading Price Condition is no longer satisfied. If the Trading Price Condition has been met, the Company shall, as soon as practicable following the condition being met, send written notice to the Trustee, and the Conversion Agent (if other than the Trustee) and so notify the Holders. If, at any time after the Trading Price Condition set forth above has been met, the Trading Price per $1,000 principal amount of Securities is greater than 98% of the Conversion Value, the Company shall send written notice to the Trustee and the Conversion Agent (if other than the Trustee) and so notify the Holders.

(iii) If the Company calls any or all of the Securities for redemption prior to the close of business on the Business Day immediately preceding May 1, 2016 as set forth under **Section 3.01**, Holders may surrender their Securities for conversion at any time prior to the close of

business on the Business Day immediately preceding the Redemption Date, even if the Securities are not otherwise convertible at such time. After that time, the right to convert under this clause (iii) shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder of Securities may convert its Securities until the Redemption Price has been paid or duly provided for.

(iv) Prior to the close of business on the Business Day immediately preceding May 1, 2016, if a Fundamental Change or a Make-Whole Fundamental

Change occurs, or if the Company is party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property, then Holders may surrender their Securities for conversion at any time during the period beginning on, and including, the fortieth (40th) Business Day before the date the Company originally announces as the anticipated effective date of the transaction and ending on, and including, the earlier of (x) the close of business on the thirtieth (30th) Business Day after the actual effective date of the transaction and (y) the date the Company publicly announces the transaction will not take place. In addition, if the transaction is a Make-Whole Fundamental Change, then the Securities may also be surrendered for conversion at any time during the Make-Whole Conversion Period, and if the transaction is a Fundamental Change, then the Securities may also be surrendered for repurchase at any time until the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date for such Fundamental Change. The Company shall notify in writing Holders and the Trustee (a) as promptly as practicable following the date the Company publicly announces such transaction but in no event less than forty (40) Business Days prior to the anticipated effective date of such transaction or (b) if the Company does not have knowledge of such transaction at least forty (40) Business Days prior to the anticipated effective date of such transaction, within one (1) Business Day of the date upon which the Company receives notice, or otherwise becomes aware, of such transaction, but in no event later than the actual effective date of such transaction.

(v) Prior to the close of business on the Business Day immediately preceding May 1, 2016, if the Company elects to:

(a) distribute to all or substantially all holders of Common Stock any rights, options or warrants entitling them, for a period of not more than sixty (60) days after the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for such distribution; or

(b) distribute to all or substantially all holders of Common Stock the Company's assets, debt securities or rights to purchase the Company's securities, which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Closing Sale Price of the Common Stock on the Trading Day preceding the date of announcement of such distribution,

then, in either case, the Company shall mail to Holders and the Trustee written notice at least forty (40) Business Days before the Ex-Date for such distribution. Once the Company has given such notice, Holders may surrender their Securities for conversion at any time until the earlier of the close of business on the Business Day immediately preceding the Ex-Date and the Company's announcement that such distribution will not take place, even if the Securities are not otherwise convertible at such time. No Holder

may exercise the right to convert under this clause (v) if the Holder, without conversion, otherwise receives, for each $1,000 principal amount of Securities, at the same time and upon the same terms as holders of the Common Stock the amount and kind of rights, options or warrants to subscribe for or purchase shares of the Common Stock, or assets, debt securities or rights to purchase the Company's securities, as the case may be, that the Holder would have received as if the Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Date for the distribution.

(C) A Holder may convert a portion of the principal amount of a Security if such portion is $1,000 principal amount or an integral multiple of $1,000 principal amount. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of such Security.

10.02 **CONVERSION PROCEDURE AND PAYMENT UPON CONVERSION.**

(A) To convert a Security, a Holder of a Physical Security must (1) complete and manually sign the Conversion Notice, with appropriate signature guarantee, or facsimile of the Conversion Notice and deliver the completed Conversion Notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent, (4) pay any tax or duty if required pursuant to **Section 10.04** and (5) pay the amount of interest, if any, required by **Section 10.02(E)**. If a Holder holds a beneficial interest in a Global Security, to convert such Security, the Holder must comply with clauses (4) and (5) above and the Depositary's procedures for converting a beneficial interest in a Global Security.

Upon conversion of a Holder's Security, the Company shall, subject to limitations imposed by the listing standards of The NASDAQ Global Select Market described in this **Section 10.02(A)**, pay or deliver, as the case may be, through the Conversion Agent or the Company's stock transfer agent, as the case may be, cash, shares of Common Stock, or a combination thereof (together with, as applicable, cash in lieu of any fractional share) as set forth in this **Section 10.02(A)**. The Company shall inform Holders in writing through the Trustee of its election to pay cash, deliver shares of Common Stock (together with cash in lieu of any fractional share) or pay and deliver, as the case may be, a combination thereof (together with cash in lieu of any fractional share) upon conversion of any Securities (and the Specified Cash Amount, if applicable, as described second immediately succeeding paragraph), as follows:

(i) subject to clause (ii) below, in respect of Securities having a Conversion Date during the period beginning on, and including, the thirty-second (32nd) Business Day immediately preceding the Maturity Date and ending on, and including the Business Day immediately preceding the Maturity Date, no later than the thirty-third (33rd) Business Day immediately preceding the Maturity Date;

(ii) in respect of Securities having a Conversion Date after the date of issuance of a Redemption Notice as described in **Section 3.02(A)** and prior to the related Redemption Date, in such Redemption Notice; and

(iii) in all other cases, no later than two Business Days immediately following the applicable Conversion Date.

If, in respect of any conversion of Securities, the Company has not irrevocably elected Net Share Settlement (as described in **Section 10.02(B)**), and the Company does not give notice (including notice of the Specified Cash Amount, if applicable) within the time periods described in clauses (i) through (iii) above as to how it intends to settle its conversion obligation with respect to such Securities, the Company shall satisfy such conversion obligation by delivering solely shares of Common Stock (other than paying solely cash in lieu of any fractional share).

If the Company chooses to satisfy a portion (but not all) of its conversion obligation by paying cash (other than solely cash in lieu of any fractional share) or if the Company has irrevocably elected Net Share Settlement upon conversion as described in **Section 10.02(B)**, the Company shall notify the converting Holder(s) during the periods set forth in clauses (i) through (iii) in the second immediately preceding paragraph of the amount to be satisfied in cash as a fixed dollar amount per $1,000 principal amount of Securities (the "**Specified Cash Amount**"); *provided* that if the Company has previously irrevocably elected Net Share Settlement upon conversion as described in **Section 10.02(B)**, the Specified Cash Amount must be at least $1,000. If, subsequent to the Company irrevocably electing Net Share Settlement or electing to satisfy a portion (but not all) of its conversion obligation by paying cash (other than paying solely cash in lieu of any fractional share), and the Company fails to timely notify converting Holders of the Specified Cash Amount, the Specified Cash Amount shall be deemed to be $1,000.

The Company shall treat all converting Holders with the same Conversion Date in the same manner. Except for any conversions that occur on or after the thirty-second (32nd) Business Day immediately preceding the Maturity Date, and all conversions that occur after the Company's issuance of a Redemption Notice and prior to the related Redemption Date, the Company shall not have any obligation to settle conversions occurring on different Conversion Dates in the same manner.

Notwithstanding any other provision of this Indenture or the Securities, if the Company elects to satisfy its conversion obligation by paying or delivering, as the case may be, a combination of cash and shares of Common Stock (other than paying solely cash in lieu of any fractional share), including if the Company has irrevocably elected Net Share Settlement as described in **Section 10.02(B)**, the Company shall not issue more than 19.99% of its outstanding Common Stock on July 26, 2011, and the remaining payment for such settlement shall be comprised of cash (which cash shall be based on the Volume-Weighted Average Price of the Common Stock on the Trading Day immediately prior to the date on which such shares of Common Stock would otherwise be required to be delivered). In addition, if necessary to comply with the listing standards of The NASDAQ Global Select Market, notwithstanding any provision of this Indenture or the Securities, the Company shall not elect to deliver solely shares of Common Stock upon conversion of the Securities without shareholder approval if such shares would represent 20% or more of its outstanding Common Stock on July 26, 2011.

If the Company elects to settle any conversion of Securities by delivering solely shares of Common Stock (other than paying solely cash in lieu of any fractional share), including if the Company has irrevocably elected Full Physical Settlement upon conversion as described in

Section 10.02(C), such settlement shall occur within three Business Days of the relevant Conversion Date. Except upon conversion in connection with a Common Stock Change Make-Whole Fundamental Change where the consideration for Common Stock is comprised entirely of cash as described in **Section 10.15(C)**, settlement of conversions of the Securities made entirely or partially in cash (other than solely cash in lieu of any fractional share) (including if the Company has irrevocably elected Net Share Settlement upon conversion as described in **Section 10.02(B)**) shall occur on the third Business Day immediately following the final Trading Day of the applicable Cash Settlement Averaging Period.

The amount of cash and number of shares of Common Stock, as the case may be, due upon conversion of Securities shall be determined as follows:

(1) if the Company elects to satisfy its entire conversion obligation by delivering shares of Common Stock, including if the Company has irrevocably elected Full Physical Settlement upon conversion as described in **Section 10.02(C)**, the Company shall deliver to each converting Holder a number of shares of Common Stock equal to (i) (A) the aggregate principal amount of Securities converted, *divided by* (B) $1,000, *multiplied by* (ii) the Conversion Rate in effect on the relevant Conversion Date (*provided* that the Company shall pay cash in lieu of any fractional share as described in **Section 10.03**);

(2) if the Company elects to satisfy its entire conversion obligation by paying cash, the Company shall pay to each converting Holder, for each $1,000 principal amount of Securities converted, cash in an amount equal to the sum of the Daily Conversion Values for each of the thirty (30) consecutive Trading Days in the relevant Cash Settlement Averaging Period; and

(3) subject to the sixth paragraph of this **Section 10.02(A)**, if the Company elects to satisfy the conversion obligation by delivering or paying, as the case may be, a combination of cash and shares of Common Stock, including if the Company has irrevocably elected Net Share Settlement pursuant to **Section 10.02(B)**, the Company shall pay or deliver, as the case may be, to each converting Holder, for each $1,000 principal amount of Securities converted, cash and shares of Common Stock, if any, equal to the sum of the Daily Settlement Amounts for each of the thirty (30) consecutive Trading Days in the relevant Cash Settlement Averaging Period.

The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the applicable Cash Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares (if any), the Company shall notify the Trustee and the Conversion Agent of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares (if any). The Trustee and the Conversion Agent shall have no responsibility for any such determination.

(B) Subject to the sixth paragraph of **Section 10.02(A)**, at any time on or prior to the thirty-third (33rd) Business Day immediately preceding the Maturity Date, except during the period beginning on, and including, the date that the Company issues a Redemption Notice and ending on, and including the related Redemption Date, the Company may irrevocably elect to satisfy its conversion obligation with respect to the Securities having a Conversion Date after the date of such election by paying cash up to the aggregate principal amount of Securities to be converted, and paying or delivering, as the case may be, cash, shares of Common Stock or a combination thereof in respect of the remainder, if any, of the conversion obligation ("**Net Share Settlement**"). Such election (a "**Net Share Settlement Election**") shall be in the Company's sole discretion and shall not require the consent of Holders. Upon making a Net Share Settlement Election, the Company shall promptly (i) issue a press release and post such information on its website or otherwise publicly disclose this information or (ii) provide written notice to Holders by mailing such notice to Holders at their addresses shown in the register of the Registrar, or if such Securities are held in book-entry form through the Depositary, through the applicable notice procedures of the Depositary.

(C) Subject to the sixth paragraph of **Section 10.02(A)**, at any time on or prior to the thirty-third (33rd) Business Day immediately preceding the Maturity Date, except during the period beginning on, and including, the date that the Company issues a Redemption Notice and ending on, and including, the related Redemption Date, the Company may irrevocably elect to satisfy its conversion obligation with respect to the Securities having a Conversion Date after the date of such election by delivering solely shares of Common Stock (other than paying solely cash in lieu of any fractional share) in respect of the conversion obligation ("**Full Physical Settlement**"). Such election (a "**Full Physical Settlement Election**") shall be in the Company's sole discretion and shall not require the consent of Holders. Upon making a Full Physical Settlement Election, the Company shall promptly (i) issue a press release and post such information on its website or otherwise publicly disclose this information or (ii) provide written notice to Holders by mailing such notice to Holders at their addresses shown in the register of the Registrar, or if such Securities are held in book-entry form through the Depositary, through the applicable notice procedures of the Depositary.

(D) A Holder receiving any shares of Common Stock upon conversion shall not be entitled to any rights as a holder of Common Stock, including, among other things, the right to vote and receive dividends and notices of shareholder meetings, until the close of business on the Conversion Date (if the Company delivers solely shares of Common Stock in respect of the conversion obligation, other than paying solely cash in lieu of any fractional share delivered pursuant to **Section 10.03,** including if the Company has irrevocably elected Full Physical Settlement as described in **Section 10.02(C)**) or the close of business on the last Trading Day of the relevant Cash Settlement Averaging Period (if the Company pays cash in respect of a portion (but not all) of the conversion obligation upon conversion pursuant to **Section 10.02(A)**, other than solely cash in lieu of any fractional shares delivered pursuant to **Section 10.03**, including if the Company has irrevocably elected Net Share Settlement as described in **Section 10.02(B)**). On and after the Conversion Date with respect to a conversion of a Security pursuant hereto, all rights of the Holder of such Security shall terminate, other than the right to receive the consideration deliverable upon conversion of such Security as provided herein.

(E) Except as provided in the Securities or in this **Article X**, no payment or adjustment (to the Conversion Rate or otherwise) shall be made for accrued interest on a converted Security, and accrued interest, if any, shall be deemed to be paid by the consideration paid to the Holder upon conversion. Such accrued interest, if any, shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon conversion of the Securities into a combination of cash and shares of Common Stock, accrued and unpaid interest (if any) shall be deemed to be paid first out of the cash paid upon such conversion. If any Holder surrenders a Security for conversion after the close of business on the Record Date for the payment of an installment of interest but prior to the open of business on the next Interest Payment Date, then, notwithstanding such conversion, the full amount of interest payable with respect to such Security on such Interest Payment Date shall be paid on such Interest Payment Date to the Holder of record of such Security at the close of business on such Record Date; *provided*, *however*, that such Security, when surrendered for conversion, must be accompanied by payment to the Conversion Agent on behalf of the Company of an amount equal to the full amount of interest payable on such Interest Payment Date on the Security so converted; *provided further*, *however*, that such payment to the Conversion Agent described in the immediately preceding proviso in respect of a Security surrendered for conversion shall not be required (i) with respect to a Security that is surrendered for conversion after the close of business on the Record Date immediately preceding the Maturity Date; (ii) with respect to any Security surrendered for conversion after the close of business on a Record Date for the payment of an installment of interest and on or before the open of business on the related Interest Payment Date where the Company has specified a Redemption Date pursuant to **Section 3.02** that is after such Record Date but on or prior to such Interest Payment Date; or (iii) with respect to any Security surrendered for conversion after the close of business on a Record Date for the payment of an installment of interest and on or before the open of business on the related Interest Payment Date where the Company has specified a Fundamental Change Repurchase Date pursuant to **Section 3.05** that is after such Record Date but on or prior to such Interest Payment Date; *provided further* that, if the Company shall have, prior to the Conversion Date with respect to a Security, defaulted in a payment of interest on such Security, then in no event shall the Holder of such Security who surrenders such Security for conversion be required to pay such defaulted interest or the interest that shall have accrued on such defaulted interest pursuant to **Section 2.12** or otherwise (it being understood that nothing in this **Section 10.02(E)** shall affect the Company's obligations under **Section 2.12**).

(F) If a Holder converts more than one Security at the same time, the full number of shares of Common Stock issuable upon such conversion, if any, shall be based on the total principal amount of all Securities converted.

(G) Upon surrender of a Security that is converted in part, the Trustee shall authenticate for the Holder a new Security equal in principal amount to the unconverted portion of the Security surrendered.

(H) If the last day on which a Security may be converted is a Legal Holiday in a place where a Conversion Agent is located, the Security may be surrendered to that Conversion Agent on the next succeeding day that is not a Legal Holiday.

10.03 **CASH IN LIEU OF FRACTIONAL SHARES.**

The Company shall not issue fractional shares of Common Stock upon conversion of Securities. Instead, the Company shall pay cash in lieu of any fractional share based on the Closing Sale Price of Common Stock on the Conversion Date (if the Company delivers solely shares of Common Stock to satisfy its conversion obligation, other than paying solely cash in lieu of any fractional share, including if the Company has irrevocably elected Full Physical

Settlement upon conversion pursuant to **Section 10.02(C)**) or the Closing Sale Price of Common Stock on the last Trading Day of the relevant Cash Settlement Averaging Period (if the Company pays cash to satisfy a portion, but less than all, of its conversion obligation, other than solely cash in lieu of any fractional share, including if the Company has irrevocably elected Net Share Settlement upon conversion pursuant to **Section 10.02(B)**).

10.04 **TAXES ON CONVERSION.**

If a Holder converts its Security, the Company shall pay any documentary, stamp or similar issue or transfer tax or duty due on the issue, if any, of Common Stock upon the conversion. However, such Holder shall pay any such tax or duty that is due because such shares are issued in a name other than such Holder's name. The Conversion Agent may refuse to deliver a certificate representing the Common Stock to be issued in a name other than such Holder's name until the Conversion Agent receives a sum sufficient to pay any tax or duty which shall be due because such shares are to be issued in a name other than such Holder's name.

10.05 **COMPANY TO PROVIDE COMMON STOCK.**

The Company shall at all times reserve out of its authorized but unissued Common Stock or Common Stock held in its treasury enough shares of Common Stock to permit the conversion, in accordance herewith, of all of the Securities (assuming, for such purposes, that the Company has previously elected Full Physical Settlement pursuant to **Section 10.02(C)**). The shares of Common Stock, if any, due upon conversion of a Global Security shall be delivered by the Company through its stock transfer agent and in accordance with the Depositary's customary practices.

All shares of Common Stock that may be issued upon conversion of the Securities shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim.

The Company shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities and shall list such shares on each national securities exchange or automated quotation system on which the shares of Common Stock are listed.

10.06 **ADJUSTMENT OF CONVERSION RATE.**

The Conversion Rate shall be subject to adjustment from time to time, without duplication, upon the occurrence of any of the following events:

(a) If the Company issues shares of Common Stock as a dividend or distribution on the shares of Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be; and

OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this **Section 10.06(a)** shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this **Section 10.06(a)** is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company distributes to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Date for such distribution;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
Y	=	the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution.

Any increase made under this **Section 10.06(b)** shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. The Company shall not issue any such rights, options, or warrants in respect of Common Stock held in treasury by the Company. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such Ex-Date for such distribution had not occurred.

For purposes of this **Section 10.06(b)** and **Section 10.01(B)(v)**, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the announcement date for such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other of its assets, securities or property or rights, options or warrants to acquire its Capital Stock or other securities, but excluding (i) dividends or distributions covered by **Sections 10.06(a), 10.06(b)** or **10.06(e)**, (ii) dividends or distributions paid exclusively in cash covered by **Section 10.06(d)**, (iii) dividends or distributions that consist solely of Reference Property following a transaction described in **Section 10.12**, and (iv) Spin-Offs to which the provisions set forth in the latter portion of this **Section 10.06(c)** shall apply (any of such shares of the Company's Capital Stock, indebtedness or other assets, securities or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), to all or substantially all holders of Common Stock, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Date for such distribution;
SP_0	=	the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and
FMV	=	the fair market value (as determined by the Board of Directors) of the Distributed Property distributable with respect to each outstanding share of Common Stock as of the open of business as of the Ex-Date for such distribution.

Any increase made under the portion of this **Section 10.06(c)** above shall become effective immediately after the open of business on the Ex-Date for such distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Security shall receive, for each $1,000 principal amount of Securities, at the same time and upon the same terms as the holders of the Common Stock, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the close of business on the record date for such distribution.

With respect to an adjustment pursuant to this **Section 10.06(c)** where there has been a payment of a dividend or other distribution on the Common Stock of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, where such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the Spin-Off) on a U.S.

national securities exchange (a "**Spin-Off**"), the Conversion Rate in effect immediately before the close of business on the tenth (10th) Trading Day immediately following, and including, the Ex-Date for the Spin-Off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for the Spin-Off;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Date for the Spin-Off;

FMV_0 = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined by reference to the definition of Closing Sale Price as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first ten (10) consecutive Trading Day period immediately following, and including, the Ex-Date for the Spin-Off; and

MP_0 = the average of the Closing Sale Prices of the Common Stock over the first ten (10) consecutive Trading Day period immediately following, and including, the Ex-Date for the Spin-Off.

The increase to the Conversion Rate under the preceding paragraph shall be determined at the close of business on the tenth (10th) Trading Day immediately following, and including, the Ex-Date for the Spin-Off but will be given effect immediately after the open of business on the Ex-Date for the Spin-Off; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten (10) Trading Days immediately following and including, the Ex-Date of any Spin-Off, references in the portion of this **Section 10.06(c)** related to Spin-Offs to the tenth (10th) Trading Day or ten (10) consecutive Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Date of such Spin-Off and the relevant Conversion Date. If the Ex-Date for the Spin-Off is less than ten (10) Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references with respect to ten (10) Trading Days shall be deemed to be replaced, for purposes of calculating the affected daily Conversion Rates in respect of that conversion, with such lesser number of Trading Days as have

elapsed from, and including, the Ex-Date for such Spin-Off to, and including, the last Trading Day of such Cash Settlement Averaging Period. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above.

Subject in all respects to **Section 10.14**, rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this **Section 10.06(c)** (and no adjustment to the Conversion Rate under this **Section 10.06(c)** shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this **Section 10.06(c)**. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this **Section 10.06(c)** was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued.

For purposes of **Section 10.06(a)**, **Section 10.06(b)** and this **Section 10.06(c)**, any dividend or distribution to which this **Section 10.06(c)** is applicable that also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which **Section 10.06(a)** is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which **Section 10.06(b)** is applicable (the "**Clause B Distribution**"),

then (1) such dividend or distribution, other than the Clause A Distribution and Clause B Distribution, shall be deemed to be a dividend or distribution to which this **Section 10.06(c)** is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this **Section 10.06(c)** with respect to such Clause C Distribution shall then be made and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by **Section 10.06(a)** and **Section 10.06(b)** with respect thereto shall then be made, except that, if determined by the Board of Directors (I) the Ex-Date of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Date of the Clause C Distribution and (II) any shares of Common Stock

included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the Effective Date of such share split or share combination, as the case may be" within the meaning of **Section 10.06(a)** or "outstanding immediately prior to the open of business on the Ex-Date for such distribution" within the meaning of **Section 10.06(b)**.

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Date for such dividend or distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period immediately preceding the Ex-Date for such dividend or distribution; and

C = the amount in cash per share of Common Stock the Company distributes to holders of its Common Stock.

Such increase shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a

Security shall receive, for each $1,000 principal amount of Securities, at the same time and upon the same terms as holders of the Common Stock, the amount of cash such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the close of business on the record date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the expiration date for such tender or exchange offer;

CR' = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the expiration date for such tender or exchange offer;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the expiration date for such tender or exchange offer (prior to giving effect to such tender or exchange offer);

OS' = the number of shares of Common Stock outstanding immediately after the expiration date for such tender or exchange offer (after giving effect to such tender or exchange offer); and

SP' = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the expiration date for such tender or exchange offer.

The increase to the Conversion Rate under this **Section 10.06(e)** shall be determined at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the expiration date for such tender or exchange offer but will be

given effect immediately prior to the open of business on the Trading Day immediately following the expiration date for such tender or exchange offer; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the expiration date for any such tender or exchange offer, references in this **Section 10.06(e)** to the tenth (10th) Trading Day or ten (10) Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the expiration date for such tender or exchange offer and the relevant Conversion Date. If the Trading Day immediately following the expiration date for the tender or exchange offer is less than ten (10) Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of any conversion, references to ten (10) Trading Days shall be deemed to be replaced, for purposes of calculating the affected daily Conversion Rates in respect of such conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day immediately following the expiration date for such tender or exchange offer to, and including, the last Trading Day of such Cash Settlement Averaging Period. In no event shall the Conversion Rate be decreased pursuant to the formula set forth above.

(f) Notwithstanding this **Section 10.06** or any other provision of this Indenture or the Securities, if a Conversion Rate adjustment becomes effective on any Ex-Date, and a Holder that converts its Securities on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date as described under **Section 10.02** based on an adjusted Conversion Rate for such Ex-Date, then, notwithstanding the Conversion Rate adjustment provisions in this **Section 10.06**, the Conversion Rate adjustment relating to such Ex-Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) In addition to the foregoing adjustments in **subsections (a)**, **(b)**, **(c)**, **(d)** and **(e)** above, the Company may, from time to time and to the extent permitted by law and the continued listing requirements of The NASDAQ Global Select Market, increase the Conversion Rate by any amount for a period of at least twenty (20) Business Days or any longer period as may be permitted or required by law, if the Board of Directors has made a determination, which determination shall be conclusive, that such increase would be in the best interests of the Company. Such Conversion Rate increase shall be irrevocable during such period. The Company shall give notice to the Trustee and cause notice of such increase to be mailed to each Holder of Securities at such Holder's address as the same appears on the registry books of the Registrar, at least fifteen (15) days prior to the date on which such increase commences.

(h) Notwithstanding this **Section 10.06** or any other provision of this Indenture or the Securities, if any Conversion Rate adjustment becomes effective, or any Ex-Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, the close of business on the last

Trading Day of a related Cash Settlement Averaging Period (if the Company elects to satisfy the related conversion obligation by paying cash, in whole or in part, in respect thereof or if the Company has irrevocably elected Net Share Settlement pursuant to **Section 10.02(B)**), the Board of Directors shall make adjustments to the Conversion Rate and the amount of cash or number of shares of Common Stock issuable upon conversion of the Securities, as the case may be, as is be necessary or appropriate to effect the intent of this **Section 10.06** and the other provisions of **Article X** and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this **Section 10.06** shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(i) All calculations under this **Article X** shall be made to the nearest cent or to the nearest one-millionth of a share, as the case may be. Adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th.

10.07 **NO ADJUSTMENT.**

Notwithstanding anything herein or in the Securities to the contrary, in no event shall the Conversion Rate be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities;

(ii) upon the issuance of any shares of Common Stock or restricted stock, restricted stock units, non-qualified stock options, incentive stock options or any other options or rights (including stock appreciation rights) to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Securities were first issued;

(iv) for accrued and unpaid interest, if any;

(v) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender or exchange offer of the nature described in **Section 10.06**; or

(vi) solely for a change in the par value of shares of Common Stock.

No adjustment in the Conversion Rate pursuant to **Section 10.06** shall be required until cumulative adjustments amount to one percent (1%) or more of the Conversion Rate as last adjusted (or, if never adjusted, the initial Conversion Rate); *provided*, *however*, that any adjustments to the Conversion Rate which by reason of this paragraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment to the

Conversion Rate; *provided further*, that (i) on December 31 of each year and (ii) if the Securities have been converted pursuant to **Section 10.01**, then, in each case, any adjustments to the Conversion Rate that have been, and at such time remain, deferred pursuant to this **Section 10.07** shall be given effect, and such

adjustments, if any, shall no longer be carried forward and taken into account in any subsequent adjustment to the Conversion Rate.

No adjustment to the Conversion Rate need be made pursuant to **Section 10.06** for a transaction (other than for share splits or share combinations pursuant to **Section 10.06(a)**) if the Company makes provision for each Holder to participate in the transaction, at the same time and upon the same terms that holders of Common Stock participate in such transaction, without conversion, as if such Holder held a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Date or Effective Date, as applicable, of the transaction (without giving effect to any adjustment pursuant to **Section 10.06** on account of such transaction), *multiplied by* the principal amount (expressed in thousands) of Securities held by such Holder.

10.08 **OTHER ADJUSTMENTS.**

In the event that, as a result of an adjustment made pursuant to **Section 10.06** hereof, the Holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock other than Common Stock, thereafter the Conversion Rate of such other shares so receivable upon conversion of any Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this **Article X**.

10.09 **ADJUSTMENTS FOR TAX PURPOSES.**

Except as prohibited by law, and subject to the continued listing requirements of The NASDAQ Global Select Market, the Company may (but is not obligated to) increase the Conversion Rate, in addition to those required by **Section 10.06** hereof, as it determines to be advisable in order that any stock dividend, subdivision of shares, distribution of rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company or to its shareholders shall not be taxable to the recipients thereof or in order to avoid or diminish any such taxation.

10.10 **NOTICE OF ADJUSTMENT.**

Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Holders at the addresses appearing on the Registrar's books a notice of the adjustment and file with the Trustee an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

10.11 **NOTICE OF CERTAIN TRANSACTIONS.**

In the event that:

(1) the Company takes any action, or becomes aware of any event, which would require an adjustment in the Conversion Rate,

(2) the Company takes any action that would require a supplemental indenture pursuant to **Section 10.12**, or

(3) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders at the addresses appearing on the Registrar's books and the Trustee a written notice stating the proposed record, effective or expiration date, as the case may be, of any transaction referred to in **clause (1)**, **(2)** or **(3)** of this **Section 10.11**. The Company shall mail such notice at least ten (10) calendar days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in **clause (1)**, **(2)** or **(3)** of this **Section 10.11**.

10.12 **EFFECT OF RECLASSIFICATIONS, CONSOLIDATIONS, MERGERS, BINDING SHARE EXCHANGES OR SALES ON CONVERSION PRIVILEGE.**

If the Company:

(i) reclassifies the Common Stock (other than a change only in par value or a change as a result of a subdivision or combination of Common Stock to which **Section 10.06** applies);

(ii) is party to a consolidation, merger or binding share exchange; or

(iii) sells, transfers, leases, conveys or otherwise disposes of all or substantially all of the consolidated property or assets of the Company,

in each case, pursuant to which the Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property (any such event, a "**Merger Event**") then, if a Holder converts its Securities on or after the effective date of any such transaction, subject to the Company's right to settle all or a portion of its conversion obligation with respect to such Securities by paying cash (other than solely cash in lieu of any fractional share) as set forth in **Section 10.02(A)** and the Company's right to irrevocably elect Net Share Settlement as set forth in **Section 10.02(B)**, the Securities shall be convertible into the same type (in the same proportions) of consideration received by holders of Common Stock in such Merger Event ("**Reference Property**") and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under **Section 9.01(i)** providing for such change in the right to convert the Securities; *provided*, *however*, that at and after the effective time of the Merger Event, (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Securities in accordance with **Section 10.02** and (B)(I) any amount payable in cash upon conversion of the

Securities in accordance with **Section 10.02** shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Securities in accordance with **Section 10.02** shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event and (III) the Volume-Weighted Average Price for purposes of the provisions of **Section 10.02** shall be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have received in such Merger Event.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), then (i) the Reference Property into which the Securities shall be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If the Reference Property in respect of any Merger Event is composed, in whole or in part, of shares of common stock, the supplemental indenture referred to in the first sentence of this **Section 10.12** shall provide for adjustments of the Conversion Rate that shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this **Article X** (other than, in the case of any such Merger Event following the occurrence of a Make-Whole Fundamental Change in connection with which Holders were entitled to convert their Securities and receive a Make-Whole Applicable Increase pursuant to **Section 10.15**, an adjustment to the Conversion Rate of the kind set forth in **Section 10.12** upon conversion in connection with any subsequent Make-Whole Fundamental Change). If, in the case of any Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors in good faith shall reasonably determine necessary by reason of the foregoing (which determination shall be described in a Board Resolution). The provisions of this **Section 10.12** shall similarly apply to successive Merger Events.

The Company shall not become a party to any Merger Event unless its terms are consistent with this **Section 10.12**.

None of the foregoing provisions shall affect the right of a Holder to convert its Securities into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in **Section 10.01** and **Section 10.02** prior to the effective date of such Merger Event.

In the event the Company shall execute a supplemental indenture pursuant to this **Section 10.12**, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating

the reasons therefor, the kind or amount of Reference Property receivable by Holders of the Securities upon the conversion of their Securities after any such Merger Event and any adjustment to be made with respect thereto.

10.13 **CONVERSION AGENT AND TRUSTEE'S DISCLAIMER.**

The Conversion Agent and Trustee have no duty to determine when an adjustment under this **Article X** should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.10** hereof. The Conversion Agent and Trustee make no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Conversion Agent and Trustee shall not be responsible for the failure by the Company to comply with any provisions of this **Article X**.

The Conversion Agent and Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to **Section 10.12**, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.12** hereof.

10.14 **RIGHTS DISTRIBUTIONS PURSUANT TO SHAREHOLDERS' RIGHTS PLANS.**

Upon conversion of any Security or a portion thereof, the Company shall make provision such that the Holder thereof shall, to the extent such Holder is to receive shares of Common Stock upon such conversion, receive, in addition to, and concurrently with the delivery of, such shares of Common Stock upon conversion, the rights described in any shareholders' rights plan(s) of the Company then in effect, unless the rights have separated from the Common Stock prior to the time of conversion, in which case the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, Distributed Property as described in **Section 10.06(c)**, subject to readjustment in the event of the expiration, termination or redemption of such rights.

10.15 **INCREASED CONVERSION RATE APPLICABLE TO CERTAIN SECURITIES SURRENDERED IN CONNECTION WITH MAKE-WHOLE FUNDAMENTAL CHANGES.**

(A) Notwithstanding anything herein to the contrary, the Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with this **Article X**, at any time during the period (any such period occurring before the Maturity Date, a "**Make-Whole Conversion Period**") from, and including, the effective date of a Make-Whole Fundamental Change (which effective date the Company shall disclose in the written notice and public announcement referred to in **Section 10.15(E)**) to, and including, the thirtieth (30th) Business Days immediately following such effective date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change, the Fundamental Change Repurchase Date corresponding to such Fundamental Change) shall be increased to an amount equal to the Conversion Rate that would, but for this **Section 10.15**, otherwise apply to such Security pursuant to this **Article X**, *plus* an amount equal to the Make-Whole Applicable Increase.

(B) As used herein, "**Make-Whole Applicable Increase**" shall mean, with respect to a Make-Whole Fundamental Change, the amount, set forth in the following table, which corresponds to the effective date and the Applicable Price of such Make-Whole Fundamental Change:

Effective Date	Applicable Price																
	$7.579	$9.00	$10.00	$11.00	$12.00	$13.00	$14.00	$15.00	$17.00	$19.00	$21.00	$23.00	$25.00	$27.50	$30.00	$35.00	$40.00
August 1, 2011	26.3887	21.3817	16.9525	13.7236	11.3207	9.4983	8.0915	6.9870	5.3922	4.3174	3.5537	2.9856	2.5463	2.1185	1.7828	1.2868	0.9375
August 1, 2012	26.3887	18.7752	14.3069	11.1422	8.8654	7.2019	5.9672	5.0359	3.7640	2.9635	2.4238	2.0361	1.7421	1.4578	1.2342	0.8996	0.6585
August 1, 2013	26.3887	15.8802	11.1931	8.0082	5.8487	4.3854	3.3906	2.7085	1.8966	1.4648	1.2038	1.0247	0.8891	0.7552	0.6467	0.4783	0.3527
August 1, 2014	26.3887	13.5933	7.9983	3.8696	0.7995	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
August 1, 2015	26.3887	12.1807	6.7995	3.1656	0.6378	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
August 1, 2016	26.3887	5.5563	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

provided, *however*, that:

(i) if the actual Applicable Price of such Make-Whole Fundamental Change is between two (2) Applicable Prices listed in the table above under the row titled "Applicable Price," or if the actual effective date of such Make-Whole Fundamental Change is between two effective dates listed in the table above in the column immediately below the title "Effective Date," then the Make-Whole Applicable Increase for such Make-Whole Fundamental Change shall be determined by linear interpolation between the Make-Whole Applicable Increases set forth for such higher and lower Applicable Prices, or for such earlier and later Effective Dates based on a three hundred and sixty five (365) day year, as applicable;

(ii) if the actual Applicable Price of such Make-Whole Fundamental Change is greater than $40.00 per share (subject to adjustment in the same manner as the Applicable Prices pursuant to **Section 10.15(B)(iii)**), or if the actual Applicable Price of such Make-Whole Fundamental Change is less than $7.579 per share (subject to adjustment in the same manner as the Applicable Prices pursuant to **Section 10.15(B)(iii)**), then the Make-Whole Applicable Increase shall be equal to zero (0);

(iii) if an event occurs that requires, pursuant to **Section 10.06**, an adjustment to the Conversion Rate, then, on the date and at the time such adjustment is so required to be made, each Applicable Price set forth in the table above under the row titled "Applicable Price" shall be deemed to be adjusted so that such Applicable Price, at and after such time, shall be equal to the product of (1) such Applicable Price as in effect immediately before such adjustment to such Applicable Price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to

be in effect, in accordance with this **Article X**, immediately after such adjustment to the Conversion Rate;

(iv) each Make-Whole Applicable Increase amount set forth in the table above shall be adjusted in the same manner, for the same events and at the same time as the Conversion Rate is to be adjusted pursuant to **Section 10.06**; and

(v) in no event shall the Conversion Rate applicable to any Security be increased pursuant to this **Section 10.15** to the extent, but only to the extent, such increase shall cause the Conversion Rate applicable to such Security to exceed 131.9435 shares per $1,000 principal amount (the "**Maximum Conversion Rate**"); *provided*, *however*, that the Maximum Conversion Rate shall be adjusted at the same time and in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to **Section 10.06**.

(C) Upon surrender of Securities for conversion in connection with a Make-Whole Fundamental Change pursuant to **Section 10.01(B)(iv)**, the Company shall, at its option, satisfy its conversion obligation by paying or delivering, as the case may be, cash, shares of Common Stock (together with cash in lieu of any fractional share) or a combination of cash and shares of Common Stock (together with cash in lieu of any fractional share) in accordance with **Section 10.02** and as subject to further adjustment as set forth in **Section 10.12**; *provided*, *however*, that if at the effective time of a Common Stock Change Make-Whole Fundamental Change the consideration for the Common Stock is comprised entirely of cash, for any conversion of Securities following the effective date of such Common Stock Change Make-Whole Fundamental Change, the conversion obligation shall be calculated based solely on the Applicable Price for the transaction and shall be deemed to be an amount equal to, per $1,000 principal amount of converted Securities, the applicable Conversion Rate (including any Make-Whole Applicable Increase), *multiplied by* such Applicable Price. In such event, the cash due upon conversion shall be determined and paid to Holders in cash on the third (3rd) Business Day immediately following the Conversion Date.

(D) As used herein, "**Applicable Price**" shall have the following meaning with respect to a Make-Whole Fundamental Change: (a) if such Make-Whole Fundamental Change constitutes a Common Stock Change Make-Whole Fundamental Change and the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) for the Common Stock in such Common Stock Change Make-Whole Fundamental Change consists solely of cash, then the "Applicable Price" with respect to such Common Stock Change Make-Whole Fundamental Change shall be equal to the cash amount paid per share of Common Stock in such Common Stock Change Make-Whole Fundamental Change and (b) in all other circumstances, the "Applicable Price" with respect to such Make-Whole Fundamental Change shall be equal to the average of the Closing Sale Prices per share of Common Stock for the five (5) consecutive Trading Days immediately preceding, but excluding, the effective date of such Make-Whole Fundamental Change, which average shall be appropriately adjusted by the Board of Directors, in its good faith determination, to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the Ex-Date of such event occurs, at any time during such five (5) consecutive Trading Days.

(E) At least thirty (30) Business Days before the anticipated effective date of each proposed Make-Whole Fundamental Change, the Company shall mail to each Holder, in accordance with **Section 13.01**, written notice of, and shall publicly announce, through a reputable national newswire service, the anticipated effective date of such proposed Make-Whole Fundamental Change. Each such notice and announcement shall also state that, in connection with such Make-Whole Fundamental Change, the Company shall increase, in accordance herewith, the Conversion Rate applicable to Securities entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Securities must be surrendered in order to be entitled to such increase). No later than the third (3rd) Business Day immediately following the effective date of each Make-Whole

Fundamental Change, the Company shall mail, in accordance with **Section 13.01**, written notice of, and shall publicly announce, through a reputable national newswire service, such effective date and the Make-Whole Applicable Increase applicable to such Make-Whole Fundamental Change.

(F) For avoidance of doubt, the provisions of this **Section 10.15** shall not affect or diminish the Company's obligations, if any, pursuant to **Article III** with respect to a Make-Whole Fundamental Change that also constitutes a Fundamental Change.

(G) Nothing in this **Section 10.15** shall prevent an adjustment to the Conversion Rate pursuant to **Section 10.06** in respect of a Make-Whole Fundamental Change.

(H) The Company shall not take any action that would result in adjustment of the Conversion Rate, pursuant to this **Section 10.15**, in such a manner as to result in the reduction of the Conversion Price to less than the par value per share of the Common Stock.

XI. CONCERNING THE HOLDERS

11.01 ACTION BY HOLDERS.

Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (i) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, (ii) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of **Article XII** or (iii) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Securities, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action.

11.02 PROOF OF EXECUTION BY HOLDERS.

Subject to the provisions of **Section 7.01**, **Section 7.02** and **Section 12.05**, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Securities shall be proved by the security register of the Registrar or by a certificate of the Registrar. The record of any Holders' meeting shall be proved in the manner provided in **Section 12.06**.

11.03 PERSONS DEEMED ABSOLUTE OWNERS.

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Registrar may deem the Person in whose name a Security shall be registered upon the security register of the Registrar to be, and may treat it as, the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to **Section 2.12** and **Section 4.01**) accrued and unpaid interest on such Security, for conversion of such Security and for all other purposes; and neither the Company nor the Trustee nor any authenticating agent nor any Paying Agent nor any Conversion Agent nor any Registrar shall be affected by any notice to the contrary. All such payments so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Security. Notwithstanding anything to the contrary in this Indenture or the Securities following an Event of Default, any Holder of a beneficial interest in a Global Security may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Physical Security in accordance with the provisions of this Indenture.

XII. HOLDERS' MEETINGS.

12.01 PURPOSE OF MEETINGS.

A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this **Article XII** for any of the following purposes:

(A) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of **Article VI**;

(B) to remove the Trustee and nominate a successor trustee pursuant to the provisions of **Article VII**;

(C) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of **Section 9.02**; or

(D) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Securities under any other provision of this Indenture or under applicable law.

12.02 CALL OF MEETINGS BY TRUSTEE.

The Trustee may at any time call a meeting of Holders to take any action specified in **Section 12.01**, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed

to be taken at such meeting and the establishment of any record date pursuant to **Section 11.01**, shall be mailed to Holders of such Securities at their addresses as they shall appear on the security register of the Registrar. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Securities then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Securities outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

12.03 **CALL OF MEETINGS BY COMPANY OR HOLDERS.**

In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Securities then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty (20) days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in **Section 12.01**, by mailing notice thereof as provided in **Section 12.02**.

12.04 **QUALIFICATIONS FOR VOTING.**

To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Securities on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Securities on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

12.05 **REGULATIONS.**

Notwithstanding any other provision of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other

evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in **Section 12.03**, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of **Section 2.09**, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Securities held or represented by such Holder or proxyholder, as the case may be; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of **Section 12.02** or **Section 12.03** may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Securities represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

12.06 **VOTING.**

The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in **Section 12.02**. The record shall show the principal amount of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

12.07 **NO DELAY OF RIGHTS BY MEETING.**

Nothing contained in this **Article XII** shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly

conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Securities.

XIII. **MISCELLANEOUS**

13.01 **NOTICES.**

Any notice or communication by the Company or the Trustee to the other shall be deemed to be duly given if made in writing and delivered:

(A) by hand (in which case such notice shall be effective upon delivery);

(B) by facsimile (in which case such notice shall be effective upon receipt of confirmation of good transmission thereof); or

(C) by overnight delivery by a nationally recognized courier service (in which case such notice shall be effective on the Business Day immediately after being deposited with such courier service),

in each case to the recipient party's address or facsimile number, as applicable, set forth in this **Section 13.01**. The Company or the Trustee by notice to the other may designate additional or different addresses or facsimile numbers for subsequent notices or communications.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods; *provided*, *however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions and the risk or interception and misuse by third parties.

Any notice or communication to a Holder shall be mailed to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Securities Agent at the same time. If the Trustee or the Securities Agent is required, pursuant to the express terms of this Indenture or the Securities, to mail a notice or communication to Holders, the Trustee or the Securities Agent, as the case may be, shall also mail a copy of such notice or communication to the Company.

All notices or communications shall be in writing.

The Company's address is:

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Attention: General Counsel
Facsimile: (408) 716-3341

The Trustee's address is:

The Bank of New York Mellon Trust Company, N.A.
700 S. Flower Street, Suite 500
Los Angeles, CA 90017
Attention: Corporate Unit
Facsimile: (213) 630-6298

13.02 **CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.**

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(i) an Officer's Certificate stating that, in the opinion of the signatories to such Officer's Certificate, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each signatory to an Officer's Certificate or an Opinion of Counsel may (if so stated) rely, effectively, upon an Opinion of Counsel as to legal matters and an Officer's Certificate or certificates of public officials as to factual matters if such signatory reasonably and in good faith believes in the accuracy of the document relied upon.

13.03 **STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.**

Each Officer's Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(i) a statement that the Person making such certificate or opinion has read such covenant or condition;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

13.04 **COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.**

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

13.05 **RULES BY TRUSTEE AND AGENTS.**

The Registrar, Paying Agent or Conversion Agent may make reasonable rules and set reasonable requirements for their respective functions.

13.06 **LEGAL HOLIDAYS.**

A "**Legal Holiday**" is a Saturday, a Sunday or a day on which banking institutions are not required to be open in the City of New York, in the State of New York. If a payment date is a Legal Holiday, payment may be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on that payment for the intervening period.

A "**Business Day**" is a day other than a Legal Holiday.

13.07 **DUPLICATE ORIGINALS.**

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart by facsimile shall be effective as delivery of a manually executed counterpart thereof.

13.08 **GOVERNING LAW.**

THIS INDENTURE AND THE SECURITIES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE SECURITIES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

13.09 **NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.**

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any of its Subsidiaries. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

13.10 **SUCCESSORS.**

All agreements of the Company in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors.

13.11 **SEPARABILITY.**

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and a Holder shall have no claim therefor against any party hereto.

13.12 **TABLE OF CONTENTS, HEADINGS, ETC.**

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

13.13 **CALCULATIONS IN RESPECT OF THE SECURITIES; ADJUSTMENT OF PRICES.**

(A) The Company and its agents shall make all calculations under this Indenture and the Securities. These calculations include, but are not limited to, determinations of and adjustments to the Conversion Rate or Conversion Price and determinations of the Trading Price of the Securities, the Volume-Weighted Average Price, the Closing Sale Price of the Common Stock, the amount of cash and/or the number of shares or amount of Reference Property, if any, payable or issuable upon conversion of the Securities and amounts of interest payable on the Securities. The Company and its agents shall make all of these calculations in good faith, and, absent manifest error, such calculations shall be final and binding on all Holders. None of the Trustee, the

Conversion Agent, the Security Registrar, the Bid Solicitation Agent or the Paying Agent (in each case, if other than the Company) shall have any responsibility for making such calculations nor for monitoring the trading price of the Company's Common Stock. The Company shall provide a copy of such calculations to each of the Trustee and the Conversion Agent (if other than the Trustee) as required hereunder, and, absent such manifest error, each of the Trustee and the Conversion Agent (if other than the Trustee) shall be entitled to conclusively rely on the accuracy of any such calculation without independent verification. The Trustee shall forward the Company's or the Company's agent's calculations to any Holder upon the request of that Holder at the Company's sole cost and expense.

(B) Whenever any provision of this Indenture requires the Company to calculate the Closing Sale Prices, the Volume-Weighted Average Prices, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including the Cash Settlement Averaging Period and the Applicable Price for purposes of a Make-Whole Fundamental Change), the Board of Directors will make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Effective Date, Ex-Date or expiration date (in the case of a tender or exchange offer) of the event occurs, at any time during the period when such Closing Sale Prices, Volume-Weighted Average Prices, Daily Conversion Values or Daily Settlement Amounts are to be calculated.

13.14 **NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS.**

None of the Company's past, present or future directors, officers, employees or shareholders, as such, shall have any liability for any of the Company's obligations under this Indenture or the Securities or for any claim based on, or in respect or by reason of, such obligations or their creation. By accepting a Security, each holder waives and releases all such liability. This waiver and release is part of the consideration for the issue of the Securities.

13.15 **FORCE MAJEURE.**

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[***The Remainder of This Page Intentionally Left Blank***]

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

ACCURAY INCORPORATED

By: /s/ Derek Bertocci
Name: Derek Bertocci
Title: Chief Financial Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: /s/ Alex Briffett
Name: John A. (Alex) Briffett
Title: Authorized Signatory

EXHIBIT A

[Face of Security]

ACCURAY INCORPORATED

Certificate No.

[INSERT PRIVATE PLACEMENT LEGEND (SECURITIES) AND GLOBAL SECURITY LEGEND AS REQUIRED]

3.75% Convertible Senior Notes due 2016 (the "**Securities**")

CUSIP No. 004397 AA3

Accuray Incorporated, a Delaware corporation (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to [ ], or its registered assigns, the principal sum [of [ ] dollars ($[ ])](1) [as set forth in the "Schedule of Exchanges of Interests in the Global Security" attached hereto, which amount, taken together with the principal amounts of all other outstanding Securities, shall not, unless permitted by the Indenture, exceed one hundred million dollars ($100,000,000) (or one hundred fifteen million dollars ($115,000,000)) if the Initial Purchaser exercises its option to purchase Option Securities in full as set forth in the Purchase Agreement) in aggregate at any time, in accordance with the rules and procedures of the Depositary](2), on August 1, 2016, and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest are paid or duly provided for.

Interest Payment Dates: February 1 and August 1, with the first payment to be made on February 1, 2012.

Record Dates: January 15 and July 15.

The provisions on the back of this certificate are incorporated as if set forth on the face hereof.

(1) This is included for Physical Securities.

(2) This is included for Global Securities.

IN WITNESS WHEREOF, Accuray Incorporated has caused this instrument to be duly signed.

ACCURAY INCORPORATED

By: _____
Name:
Title:

Dated: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Authorized Signatory

Dated: _____

[REVERSE OF SECURITY]

ACCURAY INCORPORATED

3.75% Convertible Senior Notes due 2016

1. **Interest**. Accuray Incorporated, a Delaware corporation (the "**Company**"), promises to pay interest on the principal amount of this Security at the rate *per annum* shown above. The Company shall pay interest, payable semi-annually in arrears, on February 1 and August 1 of each year, with the first payment to be made on February 1, 2012. Interest on the Securities shall accrue on the principal amount from, and including, the most recent date to which interest has been paid or provided for or, if no interest has been paid, from, and including, August 1, 2011, in each case to, but excluding, the next Interest Payment Date or Maturity Date, as the case may be. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay, in cash, interest on any overdue amount (including, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities. In certain circumstances, Additional Interest shall be payable in accordance with **Section 4.09(A)**, **Section 4.09(B)** and **Section 6.02(B)** of the Indenture and any reference to "interest" shall be deemed to include any such Additional Interest.

2. **Maturity**. The Securities shall mature on August 1, 2016.

3. **Method of Payment**. Except as provided in the Indenture (as defined below), the Company shall pay interest on the Securities to the Persons who are Holders of record of Securities at the close of business on the Record Date set forth on the face of this Security immediately preceding the applicable Interest Payment Date. Holders must surrender Securities to a Paying Agent to collect the principal amount plus, if applicable, accrued and unpaid interest, if any, or the Fundamental Change Repurchase Price, payable as herein provided on the Maturity Date or Fundamental Change Repurchase Date, as applicable.

4. **Paying Agent, Registrar, Bid Solicitation Agent, Conversion Agent and Custodian**. Initially, The Bank of New York Mellon Trust Company, N.A. (the "**Trustee**") shall act as Paying Agent, Registrar, Conversion Agent and Custodian, and the Company shall act as Bid Solicitation Agent. The Company may change any Paying Agent, Registrar, Bid Solicitation Agent or Conversion Agent without prior notice.

5. **Indenture**. The Company issued the Securities under an Indenture dated as of August 1, 2011 (the "**Indenture**") between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb) (the "TIA") as amended and in effect from time to time. The Securities are subject to all terms set forth in the Indenture, and Holders are referred to the Indenture for a statement of such terms. The Securities are general unsecured senior obligations of the Company limited to $100,000,000 aggregate principal amount (or $115,000,000 if the Initial Purchaser has elected to exercise in full the Option to purchase up to an additional $15,000,000 aggregate principal amount of the Securities), except as otherwise provided in the Indenture (and except for Securities issued in substitution for destroyed, mutilated, lost or stolen Securities). Terms used herein without definition and which

are defined in the Indenture have the meanings assigned to them in the Indenture. In the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

6. **Optional Redemption; No Sinking Fund.** No sinking fund is provided for the Securities. The Securities will not be redeemable by the Company prior to August 1, 2014. On or after August 1, 2014 and prior to the Maturity Date, the Company may redeem for cash all or a portion of the Securities if the Closing Sale Price of the Common Stock exceeds 130% of the applicable Conversion Price of such Securities for at least twenty (20) Trading Days during any consecutive thirty (30) Trading Day period (including the last Trading Day of such period) ending on the last Trading Day before the date on which the Company provides a Redemption Notice as set forth in **Section 3.02** of the Indenture at the Redemption Price; *provided* that the Company must make at least six semi-annual interest payments (including the interest payments on February 1, 2012 and August 1, 2014) in the full amount required under the Indenture before redeeming any Securities at its option.

7. **Repurchase at Option of Holder Upon a Fundamental Change.** Subject to the terms and conditions of the Indenture, in the event of a Fundamental Change, each Holder of the Securities shall have the right, at the Holder's option, to require the Company to repurchase for cash such Holder's Securities including any portion thereof which is $1,000 in principal amount or any integral multiple thereof on the Fundamental Change Repurchase Date, at a price payable in cash equal to the Fundamental Change Repurchase Price.

8. **Conversion**.

Upon the occurrence of certain events and during certain periods, the Securities shall be convertible into cash, shares of Common Stock, or a combination thereof in accordance with **Article X** of the Indenture. To convert a Security, a Holder must satisfy the requirements of **Section 10.02(A)** of the Indenture. A Holder may convert a portion of a Security if the portion is $1,000 principal amount or an integral multiple of $1,000 principal amount.

Upon conversion of a Security, the Holder thereof shall be entitled to receive the cash, shares of Common Stock, or a combination thereof, payable upon conversion in accordance with **Article X** of the Indenture, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

The Conversion Rate applicable to each Security that is surrendered for conversion, in accordance with the Securities and Article X of the Indenture, at any time during the Make-Whole Conversion Period with respect to a Make-Whole Fundamental Change shall be increased to an amount equal to the Conversion Rate that would, but for **Section 10.15** of the Indenture, otherwise apply to such Security pursuant to Article X of the Indenture, plus an amount equal to the Make-Whole Applicable Increase.

9. **Denominations, Transfer, Exchange**. The Securities are in registered form, without interest coupons, in denominations of integral multiples of $1,000 principal amount. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate

endorsements and transfer documents. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge that may be imposed in connection with certain transfers or exchanges as required by law or set forth in the Indenture. The Company or the Trustee, as the case may be, shall not be required to register the transfer of or exchange any Security for which the Holder has delivered, and not validly withdrawn, a Purchase Notice in accordance with the Indenture, except (i) if the Company defaults in the payment of the Fundamental Change Repurchase Price or (ii) with respect to that portion of the Securities not being repurchased. In the event of any Optional Redemption in part, the Company shall not be required to register the transfer of exchange of any Security so selected for Optional Redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

10. **Persons Deemed Owners**. The registered Holder of a Security may be treated as the owner of such Security for all purposes.

11. **Amendments, Supplements and Waivers**. The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Securities, and in certain other circumstances, with the consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities, to amend or supplement the Indenture or the Securities.

12. **Defaults and Remedies**. Subject to certain exceptions, if an Event of Default occurs and is continuing, the Trustee by notice to the Company or the Holders of at least twenty five percent (25%) in principal amount of the Securities then outstanding by notice to the Company and the Trustee may declare the principal of, and any accrued and unpaid interest on, all Securities to be due and payable immediately. If one of certain bankruptcy- and insolvency-related Events of Default occurs and is continuing, the principal of, and accrued and unpaid interest on, all the Securities shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. Subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if certain conditions set forth in the Indenture are satisfied.

13. **Trustee Dealings with the Company**. The Trustee under the Indenture, or any banking institution serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for, the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not Trustee.

14. **Authentication**. This Security shall not be valid until authenticated by the manual or facsimile signature of the Trustee or an authenticating agent in accordance with the Indenture.

15. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (Uniform Gifts to Minors Act).

THE COMPANY SHALL FURNISH TO ANY HOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE A COPY OF THE INDENTURE. REQUESTS MAY BE MADE TO:

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attn: General Counsel

ATTACHMENT 1

FORM OF ASSIGNMENT

I or we assign to

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

(please print or type name and address)

the within Security and all rights thereunder, and hereby irrevocably constitute and appoint

Attorney to transfer the Security on the books of the Company with full power of substitution in the premises.

Dated: _____

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Security in every particular without alteration or enlargement or any change whatsoever and be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Registrar.

Signature Guarantee: _____

In connection with any transfer of this Security occurring prior to the Resale Restriction Termination Date, the undersigned confirms that it is making, and it has not utilized any general solicitation or general advertising in connection with, the transfer:

[Check One]

(1) o to Accuray Incorporated or any Subsidiary thereof; or

(2) o pursuant to a registration statement which has become effective under the Securities Act of 1933, as amended (the "**Securities Act**") (which is not expected to be available); or

(3) o to a Qualified Institutional Buyer in compliance with Rule 144A under the Securities Act; or

(4) o pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or any other available exemption from the registration requirements of the Securities Act.

Unless one of the items (1) through (4) is checked, the Registrar shall refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided*, *however*, that if item (4) is checked, the Company, the transfer agent or the Registrar may require, prior to registering any such transfer of the Securities, in their sole discretion, such written legal opinions, certifications and other evidence as the Registrar or the Company have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. If item (3) is checked, the purchaser must complete the certification below.

If none of the foregoing items are checked, the Trustee or Registrar shall not be obligated to register this Security in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Indenture shall have been satisfied.

Dated: _____ Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee: _____

TO BE COMPLETED BY PURCHASER IF (3) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A and acknowledges that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____ _____

NOTICE: To be executed by an executive officer

ATTACHMENT 2

FORM OF CONVERSION NOTICE

To convert this Security in accordance with the Indenture, check the box: o

To convert only part of this Security, state the principal amount to be converted (must be in multiples of $1,000):

$

I f you want the stock certificate representing the Common Stock, if any, issuable upon conversion made out in another person's name, fill in the form below:

(Insert other person's soc. sec. or tax I.D. no.)

(Print or type other person's name, address and zip code)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by: _____

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

ATTACHMENT 3

FORM OF PURCHASE NOTICE

Certificate No. of Security:

If you want to elect to have this Security purchased by the Company pursuant to **Section 3.05** of the Indenture, check the box: o

If you want to elect to have only part of this Security purchased by the Company pursuant to **Section 3.05** of the Indenture, state the principal amount to be so purchased by the Company:

$
(in an integral multiple of $1,000)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

SCHEDULE A(3)

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL SECURITY

Accuray Incorporated
3.75% Convertible Senior Notes due 2016

The initial principal amount of this Global Security is DOLLARS ($[ ]). The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Security	Amount of increase in Principal Amount of this Global Security	Principal Amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

(3) This is included for Global Securities.

EXHIBIT B-1A

FORM OF PRIVATE PLACEMENT LEGEND (SECURITIES)

THIS SECURITY AND ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF ACCURAY INCORPORATED (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF; OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT (WHICH IS NOT EXPECTED TO BE AVAILABLE); OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (D) ABOVE, THE COMPANY, THE TRUSTEE AND THE TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT B-1B

FORM OF PRIVATE PLACEMENT LEGEND (COMMON STOCK)

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF ACCURAY INCORPORATED (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF; OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT (WHICH IS NOT EXPECTED TO BE AVAILABLE); OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (D) ABOVE, THE COMPANY, THE TRUSTEE AND THE TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT B-2

FORM OF LEGEND FOR GLOBAL SECURITY

Any Global Security authenticated and delivered hereunder shall bear a legend (which would be in addition to any other legends required in the case of a Restricted Security) in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER

USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.16 OF THE INDENTURE.

EXHIBIT C

Form of Notice of Transfer Pursuant to Registration Statement

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attention: General Counsel

The Bank of New York Mellon Trust Company, N.A.
700 S. Flower Street, Suite 500
Los Angeles, CA 90017
Attention: Corporate Unit
Facsimile: (213) 630-6298

Re: Accuray Incorporated (the "**Company**") 3.75% Convertible Senior Notes due 2016 (the "**Securities**")

Ladies and Gentlemen:

Please be advised that has transferred $ aggregate principal amount of the Securities and shares of Common Stock, par value $0.001 per share, of the Company issued on conversion of the Securities ("**Common Stock**") pursuant to an effective Shelf Registration Statement on Form S-3 (File No. 333-).

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933 as amended, have been satisfied with respect to the transfer described above and that the above-named beneficial owner of the Securities or Common Stock is named as a "Selling Security Holder" in the Prospectus dated , or in amendments or supplements thereto (the "**Prospectus**"), and that the aggregate principal amount of the Securities and the number of shares of Common Stock transferred are [a portion of] the Securities and Common Stock listed in such Prospectus, as amended or supplemented, opposite such owner's name.

Very truly yours,

_____
(Name)

AMENDMENT TO STRATEGIC ALLIANCE AGREEMENT

This AMENDMENT TO STRATEGIC ALLIANCE AGREEMENT (this "Amendment") is made and entered into as of August 3, 2011 by ACCURAY INCORPORATED, a Delaware corporation ("Accuray"), and SIEMENS AKTIENGESELLSCHAFT, a corporation formed under the laws of the Federal Republic of Germany ("Siemens"). Accuray and Siemens may be referred to in this Amendment individually as a "Party" or collectively as the "Parties."

WHEREAS, the Parties have previously entered into that certain Strategic Alliance Agreement, dated as of June 8, 2010 (the "Strategic Alliance Agreement");

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated as of March 6, 2011, and effective as of June 10, 2011, TomoTherapy Incorporated ("TomoTherapy") was merged with and into a wholly-owned subsidiary of Accuray, with TomoTherapy surviving as a wholly-owned subsidiary of Accuray (the "Merger");

WHEREAS, the Merger constitutes an Accuray Acquisition Change and, pursuant to Sections 10.3(a) and (c) of the Strategic Alliance Agreement, each of Accuray and Siemens may terminate the Strategic Alliance Agreement by delivery of a Termination Notice to the other Party within 60 days following the closing of the Merger; and

WHEREAS, the Parties desire to amend the Strategic Alliance Agreement to provide that either Party may exercise the termination rights set forth in Sections 10.3(a) and (c) with regard to the Merger by delivering a Termination Notice to the other Party at any time prior to December 31, 2011.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained in this Amendment, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Amendment to the Strategic Alliance Agreement. Notwithstanding anything to the contrary set forth in the Strategic Alliance Agreement, the Parties hereby agree that each Party shall have the right to exercise the termination rights set forth in Sections 10.3(a) and (c) with regard to the Merger by delivery of a Termination Notice to the other Party at any time on or prior to December 31, 2011.

2. Capitalized Terms. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to such terms in the Strategic Alliance Agreement.

3. Effect of Amendment. Except as amended above, the Strategic Alliance Agreement shall continue in full force and effect.

4. Governing Law/Dispute Resolution. This Amendment shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts of International Sale of Goods (CISG) and the provisions of German private international law. Further, all rules stipulated in the Strategic Alliance Agreement regarding dispute resolution, including without limitation the respective rules on arbitration, shall apply mutatis mutandis to this Amendment.

5. Severability. In the event that any provision of this Amendment becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Amendment shall continue in full force and effect without said provision.

6. Modification. This Amendment may not be altered, amended or modified in any way except by a written instrument referencing this Amendment signed by each Party.

7. Counterparts. This Amendment may be executed in counterparts, each of which shall be declared an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

The parties have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

ACCURAY INCORPORATED		**SIEMENS AKTIENGESELLSCHAFT**	
By:	/s/ Darren J. Milliken	By:	/s/ Walter Marzendorfer
Date:	3 August 2011	Date:	3/8/2011
Name:	Darren J. Milliken	Name:	Walter Marzendorfer
Title:	Senior VP and General Counsel	Title:	HIMCR CEO
By:	/s/ Euan S. Thomson	**By:**	/s/ David Kniss
Date:	4 August 2011	**Date:**	3/8/2011
Name:	Euan S. Thomson	**Name:**	David Kniss

Title: President and Chief Executive Officer **Title:** Senior Counsel

Exhibit 10.3

August 22, 2011

Chris A. Raanes

Re: AMENDMENT TO EMPLOYMENT TERMS

Dear Chris,

Accuray Incorporated (the "**Company**") is pleased to offer you the title of Executive Vice President, Chief Operating Officer. Your new title shall be effective as of July 25, 2011. This document memorializes the Amendment to the employment agreement entered into between you and the Company dated January 1, 2011 ("Employment Agreement"). All other terms of your employment shall remain unchanged, and no other modifications to the terms of your employment as set forth in the Employment Agreement may be made unless in a written amendment signed by both you and the CEO or General Counsel of the Company.

Sincerely,

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Euan Thomson, Ph.D.
Name: Euan Thomson, Ph.D.
Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

By: /s/ Chris Raanes
Chris Raanes

September 27, 2011

Euan Thomson, Ph.D.

Re: Amended and Restated Employment Agreement

Dear Euan,

Accuray Incorporated (the "**Company**") is pleased to offer you continued employment as the President and Chief Executive Officer of the Company on the terms and conditions set forth in this employment agreement (the "**Agreement**"), effective as of October 1, 2011 (the "**Effective Date**"). This letter amends and restates in its entirety your previous employment agreement, dated as of January 1, 2011 (the "**Previous Employment Agreement**"). You and the Company mutually agree to have the following terms govern your continued employment:

1. **TERM**. The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

   The term of this agreement (the "**Term**") shall be two (2) years, measured from January 1, 2011. Upon the expiration of this Agreement the provisions contained herein, with the exception of Change of Control provisions, shall have no further force or effect and your employment, if extended at the sole discretion of the Company, will continue to be at-will and any terms associated with such employment shall be embodied in a written employment agreement signed by both parties. For purposes of this Agreement the definition of "Term" shall include any extensions of the Term.

   The term of the Change of Control provisions provided for in this Agreement (the "**Change of Control Term**") shall be three (3) years, measured from January 1, 2011; however should the Company and employee enter into a new agreement after the Term expires the Change of Control provisions shall also automatically terminate and be superseded by the terms in such new agreement. Any extension of the Term of this Agreement shall also extend the term of the Change in Control provisions by an equal amount.

2. **POSITION, DUTIES AND RESPONSIBILITIES**. During the Term of this Agreement, the Company will employ you, and you agree to be employed by the Company, as the President and Chief Executive Officer. In this capacity you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Board of Directors of the Company (the "**Board**"), and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or any other location the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION**. As of the Effective Date of this Agreement, your annual base salary will be $530,500 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

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4. **ANNUAL BONUS**. In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 100% of your base salary actually paid for such year.

   In accordance with the terms of such bonus plan, payment of each bonus shall be made in a single lump-sum cash payment not later than the last day of the applicable two and one-half (2 ½) month short-term deferral period with respect to such bonus payment, within the meaning of Treasury Regulation Section 1.409A-1(b)(4).

5. **EQUITY COMPENSATION**

   (a) **STOCK OPTIONS.** As a part of your overall compensation, you may be granted the option to purchase shares of Accuray common stock ("**Options**") at a per share exercise price equal to the fair market value of a share of our common stock on the date of the grant (the "**Grant Date**"), as determined in accordance with the Accuray Incorporated 2007 Incentive Award Plan (the "**Incentive Plan**"). All Options are subject to and conditioned on approval of the grant and its terms by the Compensation Committee. Subject to your continued employment, Options will vest with respect 1/48th of the shares subject thereto on each monthly anniversary, such that the entire Option would be entirely vested on the fourth anniversary of the Grant Date. All Options are subject to the terms and conditions of the Incentive Plan and a stock option agreement in a form prescribed by Accuray (the "**Option Agreement**"), which you will be required to sign as a condition to receiving the Option.

   (b) **RESTRICTED STOCK UNITS**. Additionally, the Compensation Committee of the Board of Directors may grant you restricted stock units ("**RSUs**") in accordance with the Company's Incentive Plan. Subject to the your continued service as an Employee through the applicable vesting date, twenty-five percent (25%) of the RSUs shall vest on the first anniversary of the Grant Date and an additional twenty-five percent (25%) of the RSUs shall vest on each of the second, third and fourth anniversaries of the Grant Date. Payment in respect of any vested RSUs will be made to you in whole shares of our common stock as soon as practicable after the applicable vesting date, but in no event later than 60 days after such vesting date. Consistent with the foregoing, the terms and conditions of each RSU shall be set forth in a RSU grant agreement ("**RSU Agreement**") to be entered into by the Company and you which shall evidence the terms of each RSU.

   (c) Your current Options and RSUs as of the date of this letter are listed on Exhibit A.

6. **BENEFITS AND PAID TIME OFF**. During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and

dental insurance, paid time off, and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 6 will be subject to change from time to time as deemed appropriate and necessary by the Company.

7. TERMINATION OF EMPLOYMENT.

(a) If during the Term of this agreement, you incur a "separation from service" (within the meaning of Section 409A(a)(2)(A)(i) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and Treasury Regulation Section 1.409A-1(h)) ("**Separation from Service**") by reason of (i) a termination of your employment by the Company other than for Cause (as defined below), death or disability, (ii) the failure of the Company to either (A) extend the term of this Agreement, or (B) prior to the lapse of the term of this Agreement, offer you an employment agreement to continue as the CEO of the Company with a term of at least two years containing severance provisions that are comparable to the median severance benefits (including good reason protection for a reduction in your title or a material reduction in your base salary or bonus opportunity) for CEOs in the peer group then used by the Compensation Committee of the Board for the purpose of benchmarking executive compensation, as determined by the Compensation Committee in its sole reasonable discretion, or (iii) a termination of your employment by you for Good Reason (as defined below), and provided that you execute a general release of claims in a form prescribed by the Company in a form substantially similar to Exhibit B hereto (the "**Release**") within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the date of such Separation from Service (the "**Separation Date**") and you do not revoke such Release, and further subject to Section 16(b) below, then, in addition to any other accrued amounts payable to you through the Separation Date (earned but unpaid bonus and paid time off), the Company will on the sixtieth (60^{th}) day after the Separation Date, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to twelve (12) months of your annual base salary as in effect immediately prior to the Separation Date, plus one hundred percent (100%) of your target annual bonus for the fiscal year of the Company in which such Separation from Service occurs, plus a twelve (12) month health benefit equivalent, which shall be twice the amount that you would be required to pay to continue your group health coverage for the twelve (12) month period following the Separation from Service, payable whether or not you elect COBRA. In addition to the Severance Payment described above, the amount of your then outstanding Options and RSUs that would have become vested during the twelve (12) month period following your termination of employment shall become fully vested and exercisable immediately prior to the Separation Date. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company, but in no event later than through the end of the year following the year in which your Separation from Service occurs.

(b) If a Change of Control (as defined in Exhibit C hereto) occurs during the Term of this agreement and if within the three (3) months before and the twelve (12) months after the effective date of the Change of Control, you incur a Separation from Service by reason of (i) a termination of your employment by the Company other than for Cause, death or disability, (ii) a termination of your employment by you for Good Reason or (iii) the failure of the Company to either (A) extend the term of this Agreement, or (B) prior to the lapse of the term of this Agreement, offer you an employment agreement to continue as the CEO of the Company with a term of at least two years containing severance provisions that are comparable to the median severance benefits (including good reason protection for a reduction in your title or a material reduction in your base salary or bonus opportunity) for CEOs in the peer group then used by the Compensation Committee of the Board for the purpose of benchmarking executive compensation, as determined by the Compensation Committee in its sole reasonable discretion,, then, subject to Section 16(b) below, and provided that you execute a general release of claims in a form prescribed by the Company within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the Separation from Service and you do not revoke such Release, and further subject to Section 16(b) below, then, in addition to any other accrued amounts payable to you through the Separation Date (earned but unpaid bonus and paid time off), the Company will on the sixtieth (60^{th}) day after the Separation Date, pay you a lump-sum severance payment (the "**CoC Cash Severance**

Payment") in an amount equal to the sum of (x) twenty-four (24) months of your annual base salary as in effect immediately prior to the Separation Date; plus (y) two hundred percent (200%) of your target annual bonus for the fiscal year of the Company in which such Separation from Service occurs; plus (z) a twenty-four (24) month health benefit equivalent, which shall be twice the amount that you would be required to pay to continue your group health coverage for the twenty-four (24) month period following the Separation from Service, payable whether or not you elect COBRA. In addition to the CoC Cash Severance Benefits described above, each of your then outstanding Options and RSUs shall become fully vested and exercisable immediately prior to the Separation Date. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company, but in no event later than through the end of the year following the year in which your Separation from Service occurs. For clarity, under Change of Control this paragraph (b) shall be in lieu of any similar payments or benefits described above in paragraph (a) of this Section 7.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 7 is conditioned on and subject to your execution and non-revocation of the Release. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 7 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

i) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other material act or material omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, (iii) the material violation of Accuray's written Code of Conduct and Ethics that was provided to you, as determined in the Company's reasonable sole discretion, (iv) the violation of the Foreign Corrupt Practices Act (the "***FCPA***"), (v) your material failure to perform the normal and customary duties of your position with the Company as reasonably directed by the Company, provided, that any of the acts or omissions described in the foregoing clauses are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

ii) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent: (i) a material diminution by the Company of your duties and responsibilities hereunder, (ii) following a Change in Control, you are no longer the most senior executive of the Company or any combined or successor entity, (iii) a material change in the geographic location at which you must perform services under this letter, provided that in no event will a change to a location within a 35 mile radius of the Company's Sunnyvale corporate headquarters be deemed material for purposes of this clause; or (iv) a material diminution by the Company of your annual base salary, each as in effect on the date hereof or as the same may be increased from time to time; *provided, however,* that a termination of your employment by you shall only constitute a termination for "Good Reason" hereunder if (a) you provide the Company with written notice setting forth the specific facts or circumstances constituting Good Reason within thirty (30) days after the date you become aware of the existence of such facts or circumstances, (b) the Company has failed to cure such facts or circumstances within thirty (30) days after receipt of such written notice, and (c) the Separation Date occurs no later than seventy-five (75) days after the initial occurrence of the event constituting Good Reason.

8. **CODE SECTION 280G**.

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. If a reduction in Payments is necessary, reduction shall occur in the following order: (A) cash payments shall be reduced first and in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (B) accelerated vesting of stock awards shall be cancelled/reduced next and in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently granted stock awards will be reduced first), with full-value awards reversed before any stock option or stock appreciation rights are reduced; and (C) employee benefits shall be reduced last and in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced.

(b) All determinations required to be made under this Section 8 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

9. **RESTRICTIVE COVENANTS**.

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group

or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 9(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefore, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

10. **COMPANY RULES AND REGULATIONS**. As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook, Code of Conduct and Ethics, or as otherwise promulgated. In addition, as a condition of your employment, you will be required to complete, sign, return, and abide by the Employee Confidentiality and Inventions Agreement.

11. **WITHHOLDING**. The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

12. **ARBITRATION**. Except as set forth in 9(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law, except that the Company shall pay all JAMS arbitration fees, including, but not limited to, the arbitrator's fees and all other administrative fees and costs in excess of the amount of court filing fees that would be required if the dispute were decided in a court of law.

13. **ENTIRE AGREEMENT**. As of the Effective Date, this letter along with any applicable Option Agreement and RSU Agreement, constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group.

14. **SEVERABILITY**. Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

15. **ACKNOWLEDGEMENT**. You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

16. **SECTION 409A OF THE CODE**.

(a) The payments and benefits under this letter are intended to comply with or be exempt from the application of Section 409A of the Code so that none of the payments and benefits to be provided under this Agreement will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted to so comply. Notwithstanding any provision of this letter to the contrary, in the event that the Company determines that any payments or benefits payable hereunder may be subject to Section 409A of the Code, the Company may (without any obligation to do so or to indemnify you for failure to do so) adopt such amendments to this letter or take any other actions that the Company determines are necessary or appropriate to (a) exempt such payments and benefits from Section 409A of the Code in order to preserve the intended tax treatment of such payments or benefits, or (b) comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder. To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury Regulations and other interpretive guidance issued thereunder. Each payment and benefit payable under this Agreement is intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Department of Treasury Regulations.

(b) Notwithstanding anything to the contrary in this letter, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 7 above, shall be paid to you during the six (6)-month period following your Separation from Service to the extent that paying such amounts at the time or times indicated in this letter would result in a prohibited distribution under Section 409A(a)(2)(b)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six (6)-month period (or such earlier date upon which such amount can be paid under Section 409A of the Code without resulting in a prohibited distribution, including as a result of your death), the Company shall pay you a lump-sum amount equal to the cumulative amount that would have otherwise been payable to you during such six-month period.

(c) To the extent that any reimbursements or corresponding in-kind benefits provided to you under this letter are deemed to constitute compensation to you, such amounts will be paid or reimbursed reasonably promptly, but not later than March 15 of the year following the year in which the expense was incurred. The amount of any such payments or expense reimbursements in one year will not affect the expenses or in-kind benefits eligible for payment or reimbursement in any other taxable year, and your right to such payments or reimbursement of any such expenses will not be subject to liquidation or exchange for any other benefit.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Darren Milliken, Senior Vice President, General Counsel. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Louis J. Lavigne, Jr.
Name: Louis J. Lavigne, Jr.
Title: Chairperson of the Board

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

By: /s/ Euan S. Thomson 9/29/11
Euan Thomson

EXHIBIT A – Personnel Grant Status

Personnel Grant Status

Accuray Incorporated - Stock
ID: 20-8370041
1310 Chesapeake Terrace
Sunnyvale, CA 94089

File: Optstmt
Date: 9/23/2011
Time: 3:20:49PM

AS OF 9/23/2011

Euan Thomson

AWARDS

Number	Grant Date	Plan	Type	Granted	Price	Released	Vested	Cancelled	Unvested	Deferred	Next Deferral Release Date
00003036	8/31/2010	2007	RSU	38,300.00	$ 0.00000	0.00	0.00	0.00	38,300.00	0.00	
				38,300.00		0.00	0.00	0.00	38,300.00	0.00	

STOCK OPTIONS

Number	Grant Date	Plan	Type	Granted	Price	Exercised	Vested	Cancelled	Unvested	Outstanding	Exercisable
00000446	3/28/2002	1998	ISO	437,499.00	$ 0.75000	437,499.00	437,499.00	0.00	0.00	0.00	0.00
00000447	3/28/2002	1998	NQ	162,501.00	$ 0.75000	162,501.00	162,501.00	0.00	0.00	0.00	0.00
00000540	7/9/2003	1998	ISO	15,833.00	$ 0.75000	15,833.00	15,833.00	0.00	0.00	0.00	0.00
00000603	8/27/2003	1998	NQ	560,000.00	$ 0.75000	117,499.00	560,000.00	0.00	0.00	442,501.00	442,501.00
00000632	3/16/2004	1998	ISO	22,500.00	$ 1.40000	22,500.00	22,500.00	0.00	0.00	0.00	0.00
00000702	8/10/2004	1998	ISO	91,399.00	$ 2.50000	39,500.00	91,399.00	0.00	0.00	51,899.00	51,899.00
00000703	8/10/2004	1998	NQ	208,601.00	$ 2.50000	0.00	208,601.00	0.00	0.00	208,601.00	208,601.00
00000783	5/12/2005	1998	ISO	2,500.00	$ 3.50000	0.00	2,500.00	0.00	0.00	2,500.00	2,500.00
00000788	11/7/2005	1998	ISO	20,833.00	$ 4.38000	0.00	20,833.00	0.00	0.00	20,833.00	20,833.00
00000789	11/7/2005	1998	NQ	137,167.00	$ 4.38000	0.00	137,167.00	0.00	0.00	137,167.00	137,167.00
00000919	4/5/2006	1998	ISO	2,500.00	$ 6.73000	0.00	2,500.00	0.00	0.00	2,500.00	2,500.00
00000996	8/23/2006	1998	ISO	8,755.00	$ 9.50000	0.00	8,755.00	0.00	0.00	8,755.00	8,755.00
00001559	8/31/2007	2007	NQ	40,000.00	$ 28.47000	0.00	40,000.00	0.00	0.00	40,000.00	40,000.00
00001560	8/31/2007	2007	NQ	135,000.00	$ 13.83000	0.00	135,000.00	0.00	0.00	135,000.00	135,000.00
00002062	2/29/2008	2007	NQ	40,000.00	$ 10.36000	0.00	36,667.00	0.00	3,333.00	40,000.00	36,667.00
00002178	8/29/2008	2007	NQ	140,000.00	$ 8.25000	0.00	110,833.00	0.00	29,167.00	140,000.00	110,833.00
00002546	2/27/2009	2007	NQ	40,000.00	$ 4.67000	0.00	26,667.00	0.00	13,333.00	40,000.00	26,667.00
00002629	8/31/2009	2007	NQ	160,000.00	$ 6.41000	0.00	76,667.00	0.00	83,333.00	160,000.00	76,667.00
00002945	1/29/2010	2007	NQ	40,000.00	$ 5.94000	0.00	16,667.00	0.00	23,333.00	40,000.00	16,667.00
00003035	8/31/2010	2007	NQ	75,000.00	$ 6.58000	0.00	17,188.00	0.00	57,812.00	75,000.00	17,188.00
00003404	1/31/2011	2007	NQ	40,000.00	$ 8.56000	0.00	6,667.00	0.00	33,333.00	40,000.00	6,667.00
C0000540	7/9/2003	1998	NQ	24,167.00	$ 0.75000	0.00	24,167.00	0.00	0.00	24,167.00	24,167.00
C0000632	3/16/2004	1998	NQ	17,500.00	$ 1.40000	0.00	17,500.00	0.00	0.00	17,500.00	17,500.00
C0000783	5/12/2005	1998	NQ	37,500.00	$ 3.50000	0.00	37,500.00	0.00	0.00	37,500.00	37,500.00

Personnel Grant Status

Accuray Incorporated - Stock
ID: 20-8370041
1310 Chesapeake Terrace
Sunnyvale, CA 94089

AS OF 9/23/2011

Euan Thomson

STOCK OPTIONS

Number	Grant Date	Plan	Type	Granted	Price	Exercised	Vested	Cancelled	Unvested	Outstanding	Exercisable
C0000919	4/5/2006	1998	NQ	37,500.00	$ 6.73000	0.00	37,500.00	0.00	0.00	37,500.00	37,500.00
C0000996	8/23/2006	1998	NQ	291,245.00	$ 9.50000	0.00	291,245.00	0.00	0.00	291,245.00	291,245.00
				2,788,000.00		795,332.00	2,544,356.00	0.00	243,644.00	1,992,668.00	1,749,024.00

EXHIBIT B – General Release Template

GENERAL RELEASE AND SEPARATION AGREEMENT

This General Release and Separation Agreement (hereafter "**Agreement**") is entered into between (the "**Executive**"), and Accuray Incorporated (the "**Company**"), effective on the eighth calendar day following the Executive's signature (the "**Effective Date**"), unless he/she revokes his/her acceptance in accordance with the terms of Section 6(b), below.

WHEREAS, the Executive was of the Company, pursuant to the terms of the original employment offer letter dated (the "**Employment Agreement**");

WHEREAS, the Executive resigned effective ; and

WHEREAS, the Company and the Executive now wish to document the termination of their employment relationship and fully and finally to resolve all matters between them;

THEREFORE, in exchange for the good and valuable consideration set forth herein, the adequacy of which is specifically acknowledged, the Executive and the Company hereby agree as follows:

1. Resignation of Employment. The Executive confirms his/her resignation of his/her employment and of his/her position as an officer of the Company effective (the "**Resignation Date**"). The parties hereby acknowledge and agree that the Executive's resignation of employment constitutes a "separation from service" from the Company within the meaning of Section 409A(a)(2)(A)(i) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and Treasury Regulation Section 1.409A-1(h) (a "**Separation from Service**"). As of the Resignation Date, the Employment Agreement shall automatically terminate and be of no further force and effect, and neither the Company nor the Executive shall have any further obligations thereunder, except as expressly provided herein. Notwithstanding the foregoing, the Company shall be obligated to Executive for severance payments and continuation of benefits as contemplated by Section 7 of the Employment Agreement and as set forth in Section 3 below.

2. Payment of Accrued Wages and Expenses. The Executive acknowledges receipt, on the Resignation Date, of an amount equal to all accrued wages through the Resignation Date, including accrued, unused vacation and/or paid time off, less applicable taxes and other authorized withholding (apart from the Executive's bonus for the current fiscal year, which will be paid in accordance with the regular terms of the Company Bonus Plan). The Executive shall also be promptly reimbursed for all expenses incurred by him on behalf of the Company, so long as they are submitted on or before for reimbursement and they are in accordance with the Company's expense reimbursement policies.

3. Cash Severance Benefits and COBRA Premiums. The Executive agrees that, except as set forth in this Agreement, he/she is entitled to no additional pay or benefits in conjunction with the termination of his/her employment. Subject to Section 22(b) of this Agreement, the Company shall pay to the Executive, in a lump-sum, cash severance in the gross amount of (the "**Severance Payment**"), which the parties acknowledge and agree represents the amount of the "Severance Payment" calculated under, and as defined in, Section 7 of the Employment Agreement, consisting of:

1. Salary: $
2. Bonus (if applicable) $
3. Health Benefit (if applicable) $

The Severance Payment shall be paid net of applicable taxes and other authorized withholding.

4. Stock Options and Restricted Stock Units. The Executive acknowledges that as of the Resignation Date, the Executive was vested in Stock Options and Restricted Stock Units ("**RSUs**") as reflected in the report attached as Exhibit A hereto. Except as specifically set forth herein, the Executive's rights with respect to Stock Options and RSUs issued to him/her are governed by the Stock Option and Restricted Stock Unit Agreements entered into between the Executive and the Company, and the applicable Company equity incentive plan(s) and Notice(s) of Grant.

5. Outplacement Assistance. The Company will pay for outplacement assistance for the Executive in an amount not to exceed $, provided that the Executive begins such outplacement assistance with Accuray's outplacement provider on or before . Accuray's outplacement service provider will bill Accuray directly and there is no cash value to this benefit.

6. General Release of Claims by the Executive.

(a) The Executive, on behalf of himself/herself and his/her executors, heirs, administrators, representatives and assigns, hereby agrees to release and forever discharge the Company and all predecessors, successors and their respective parent corporations, affiliates, related, and/or subsidiary entities, and all of their past and present investors, directors, shareholders, officers, general or limited partners, executives, attorneys, agents and representatives, and executive benefit plans in which the Executive is or has been a participant by virtue of his/her employment with the Company, from any and all claims, debts, demands, accounts, judgments, rights, causes of action, equitable relief, damages, costs, charges, complaints, obligations, promises, agreements, controversies, suits, expenses, compensation, responsibility and liability of every kind and character whatsoever (including attorneys' fees and costs), whether in law or equity, known or unknown, asserted or unasserted, suspected or unsuspected (collectively, "**Claims**"), which the Executive has or may have had against such entities based on any events or circumstances arising or occurring on or prior to the date hereof or on or prior to the Resignation Date, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever the Executive's employment by the Company or the separation thereof, and any and all claims arising under federal, state, or local laws relating to employment, including without limitation claims of wrongful discharge, breach of express or implied contract, fraud, misrepresentation, defamation, or liability in tort, claims of any kind that may be brought in any court or administrative agency, any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Executive Retirement Income Security Act, the Family and Medical Leave Act, and similar state or local statutes, ordinances, and regulations, including, without limitation, the California Family Rights Act, the California Fair Employment and Housing Act and the California Labor Code.

Notwithstanding the generality of the foregoing, the Executive does not release the following claims and rights:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims to continued participation in certain of the Company's group benefit plans pursuant to the terms and conditions of the federal law known as COBRA;

(iii) The Executive's right to bring to the attention of the Equal Employment Opportunity Commission claims of discrimination; provided, however, that the Executive does release his/her right to secure damages for any alleged discriminatory treatment;

(iv) The Executive's rights under the Indemnification Agreement between Company and Executive and under applicable law (including California Labor Code Section 2802), the General Corporation Law of Delaware and the Company's D&O policy to seek indemnity for acts committed, or omissions, within the course and scope of the Executive's employment duties; and

(v) Claims for breach of this Separation Agreement.

(b) In accordance with the Older Workers Benefit Protection Act of 1990, the Executive acknowledges that he/she is aware of the following:

(i) This Section and this Agreement are written in a manner calculated to be understood by the Executive.

(ii) The waiver and release of claims under the ADEA contained in this Agreement does not cover rights or claims that may arise after the date on which the Executive signs this Agreement.

(iii) This Agreement provides for consideration in addition to anything of value to which the Executive is already entitled.

(iv) The Executive has been advised to consult an attorney before signing this Agreement.

(v) The Executive has been granted forty-five (45) [twenty one (21)] days after he/she is presented with this Agreement to decide whether or not to sign this Agreement. If the Executive executes this Agreement prior to he/she does so voluntarily and after having had the opportunity to consult with an attorney, and hereby waives the remainder of the period.

(vi) The Executive has the right to revoke this general release within seven (7) days of signing this Agreement. In the event this general release is revoked, this Agreement will be null and void in its entirety, and the Executive will not receive the benefits of this Agreement.

If the Executive wishes to revoke this agreement, he/she must deliver written notice stating that intent to revoke, in accordance with the notice provisions of Section 17 of this Agreement, on or before 5:00 p.m. on the seventh (7^{th}) day after the date on which the Executive signs this Agreement.

7. The Company's Release of Claims. Nothing herein shall release or discharge any Claim by the Company against the Executive, or the right of the Company to bring any action, legal or otherwise, against the Executive as a result of any failure by him to perform his/her obligations under this Agreement, or as a result of any acts of intentional misconduct or recklessness (including, but not limited to, fraud, embezzlement, misappropriation, or other malfeasance).

8. Waiver of Rights Under California Civil Code Section 1542. The Company and the Executive acknowledge that they have been advised of and are familiar with the provisions of California

Civil Code Section 1542, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his/her or her favor at the time of executing the release, which if known by him or her must have materially affected his/her or her settlement with the debtor."

Being aware of said code section, the Company and the Executive hereby expressly waive any rights they may have thereunder, as well as under any other statutes or common law principles of similar effect; provided, however, that such waiver is not intended to affect claims expressly preserved under the terms of the parties' respective releases.

9. Nondisparagement. The Executive agrees that neither he/she nor anyone acting by, through, under or in concert with him shall disparage or otherwise communicate negative statements or opinions about the Company, its Board members, officers, executives or business. The Company agrees that neither its Board members nor executive officers shall disparage or otherwise communicate negative statements or opinions about the Executive.

10. Restrictive Covenants. The Executive acknowledges his/her continuing obligations, pursuant to Section 9(a), (b) and (d) of the Employment Agreement.

11. Cooperation. The Executive agrees to give reasonable cooperation, at the Company's request, in any pending or future litigation or arbitration brought against the Company and in any investigation that the Company or any government entity may conduct. The Company shall reimburse the Executive for all out of pocket expenses reasonably incurred by him in compliance with this Section 11. For his/her part, Executive agrees to submit a reimbursement for such out of pocket expenses within thirty (30) days after they have been incurred.

12. Executive's Representations and Warranties. The Executive represents and warrants that:

(a) He/she has been paid all wages owed to him by the Company, including all accrued, unused vacation and/or paid time off, as of the date of execution of this Agreement;

(b) As of the date of execution of this Agreement, he/she has not sustained any injuries for which he/she might be entitled to compensation pursuant to California's Workers Compensation law;

(c) The Executive has not initiated any adversarial proceedings of any kind against the Company or against any other person or entity released herein, nor will he/she do so in the future, except as specifically allowed by this Agreement.

13. Confidential Information; Return of Company Property.

(a) The Executive hereby expressly confirms his/her continuing obligations to the Company pursuant to Section 9(a) of the Employment Agreement, and pursuant to the Employee Invention Assignment and Confidentiality Agreement executed by the Executive, a copy of which is attached as Exhibit B and incorporated herein by reference.

(b) The Executive shall deliver to the Company within five days of the Resignation Date, all originals and copies of correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the Company and its customers', business plans, marketing strategies, products, processes or business of any kind, and all

originals and copies of documents that contain proprietary information or trade secrets of the Company that are in the possession or control of the Executive or his/her agents or representatives.

(c) The Executive shall return to the Company within five days of the Resignation Date all equipment of the Company in his/her possession or control. The Executive may however keep his/her Company issued laptop computer and cellular phone. Accuray will remove all Company licensed software and Confidential information before delivering possession.

14. Taxes. To the extent any taxes may be payable by the Executive for the benefits provided to him by this Agreement beyond those withheld by the Company, the Executive agrees to pay them himself/herself and to indemnify and hold the Company and the other entities released herein harmless for any tax claims or penalties, and associated attorneys' fees and costs, resulting from any failure by him to make required payments.

15. In the Event of a Claimed Breach. All controversies, claims and disputes arising out of or relating to this Agreement, including without limitation any alleged violation of its terms, shall be resolved by final and binding arbitration before a single neutral arbitrator in San Jose, California, in accordance with the applicable dispute resolution rules of the Judicial Arbitration and Mediation Service ("**JAMS**"). The arbitration shall be commenced by filing a demand for arbitration with JAMS within 60 (sixty) days after the filing party has given notice of such breach to the other party. The arbitrator shall have authority to award the prevailing party attorneys' fees and expert fees, if any. Notwithstanding the foregoing, it is acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations imposed on them under Sections 13(a) and (b) hereof, and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to injunctive relief, including specific performance, to enforce such obligations, and if any action shall be brought in equity to enforce any of the provisions of Sections 13(a) and (b) of this Agreement, neither of the parties hereto shall raise the defense that there is an adequate remedy at law.

16. Choice of Law. This Agreement shall in all respects be governed and construed in accordance with the laws of the State of California, including all matters of construction, validity and performance, without regard to conflicts of law principles.

17. Notices. All notices, demands or other communications regarding this Agreement shall be in writing and shall be sufficiently given if either personally delivered or sent by facsimile or overnight courier, addressed as follows:

(a) If to the Company:

Accuray Incorporated
Attn: General Counsel
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: 408-716-4600
Fax: 408-716-4747

(b) If to the Executive:

18. Severability. Except as otherwise specified below, should any portion of this Agreement be found void or unenforceable for any reason by a court of competent jurisdiction, the parties intend that such provision be limited or modified so as to make it enforceable, and if such provision cannot be modified to be enforceable, the unenforceable portion shall be deemed severed from the remaining portions of this Agreement, which shall otherwise remain in full force and effect. If any portion of this Agreement is so found to be void or unenforceable for any reason in regard to any one or more persons, entities, or subject matters, such portion shall remain in full force and effect with respect to all other persons, entities, and subject matters. This paragraph shall not operate, however, to sever the Executive's obligation to provide the binding release to all entities intended to be released hereunder.

19. Understanding and Authority. The parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and represent and warrant that they are competent to covenant and agree as herein provided.

20. Integration Clause. This Agreement, the Employment Agreement, and the Employee Invention Assignment and Confidentiality Agreement contain the entire agreement of the parties with regard to the matters referenced herein and supersede any prior agreements as to such matters. This Agreement may not be changed or modified, in whole or in part, except by an instrument in writing signed by the Executive and the Chief Executive Officer of the Company. The Indemnification Agreement between the Company and the Executive shall not be affected by the existence of this Agreement, including this Section 20 hereof, and shall remain in full force and effect.

21. Execution in Counterparts. This Agreement may be executed in counterparts with the same force and effectiveness as though executed in a single document.

22. Section 409A of the Code.

(a) The payments and benefits under this Agreement are intended to be exempt from the application of Section 409A of the Code. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury Regulations and other interpretive guidance issued thereunder. Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any such compensation or benefits payable under this Agreement may be subject to Section 409A of the Code and related Department of Treasury guidance, the Company may, with the Executive's prior written consent, adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to (i) exempt the compensation and benefits payable under this Agreement from Section 409A of the Code and/or preserve the intended tax treatment of such compensation and benefits, or (ii) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

(b) Notwithstanding anything to the contrary in this Agreement, no payment or benefits, including without limitation the amount payable under Section 3 hereof, shall be paid to the Executive during the six (6) month period following the Executive's Separation from Service if the Company determines that paying such amount at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amount is delayed as a result of the previous sentence, then on the first business day following the end of such six (6) month period (or such earlier date upon which such amount can be paid under Section 409A of the Code without resulting in a prohibited distribution, including as a result of the Executive's death), the

Company shall pay the Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

(c) To the extent permitted under Section 409A of the Code, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A and the six (6) month delay requirement under 409A(a)(2)(B)(i) of the Code to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A of the Code.

(d) To the extent that any reimbursements or corresponding in-kind benefits provided to the Executive under this Agreement, including, without limitation under Section 2 or Section 11 hereof, are deemed to constitute compensation to the Executive, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments or expense reimbursements in one year shall not affect the expenses or in-kind benefits eligible for payment or reimbursement in any other taxable year, and the Executive's right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

The parties have carefully read this Agreement in its entirety; fully understand and agree to its terms and provisions; and intend and agree that it is final and binding on all parties.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed the foregoing on the dates shown below.

EXECUTIVE NAME	ACCURAY INCORPORATED
_____	_____
Executive Name	*Company Officer*
Date _____	Date _____

EXHIBIT C

For purposes of this letter, "**Change of Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

September 13, 2011

Kelly J. Londy

Re: EMPLOYMENT TERMS

Dear Kelly,

Accuray Incorporated (the "**Company**") is pleased to offer you the position of Senior Vice President, Chief Commercial Officer on the terms and conditions set forth in this letter (the "**Agreement**"), effective as of your employment start date (the "**Effective Date**" and "**Start Date**"). In the event that you do not commence employment with the Company on the Effective Date, this Agreement shall be of no further force or effect, and you shall have no rights to compensation, benefits or other consideration hereunder. This offer of employment is contingent upon successful completion of a reference and background check as mentioned in the release you submitted.

1. **TERM**. The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

   This Agreement shall become effective on your Start Date and shall terminate on December 31, 2012. This period shall be referred to as the "**Original Term**". Upon the expiration of the Original Term, all of the provisions contained herein, with the exception of Change of Control provisions, shall have no further force or effect. It is however anticipated that the Compensation Committee of the Board of Directors will review all executive employment agreements prior to the expiration of your Original Term, and will extend or renew all executive employment agreements in accordance with the Company's compensation philosophy and regular processes.

   The Change of Control provisions of this Agreement shall remain in force until December 31, 2013 (the "**Change of Control Term**"). Should you and the Company enter into a new employment agreement upon expiration of the Original Term, the Change of Control provisions shall also automatically terminate and be superseded by the change of control provisions of the new agreement. Any extension of the Original Term of this Agreement shall also extend the term of the Change in Control provisions by an equal amount.

2. **POSITION, DUTIES AND RESPONSIBILITIES**. The Company will employ you, and you agree to be employed by the Company, as Senior Vice President, Chief Commercial Officer. In this capacity you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer (the "CEO") of the Company, and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or any other location the

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Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION**. The Company will pay you a base salary of **$320,000** per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **ANNUAL BONUS**. In addition to the base salary set forth above, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be **sixty-five (65%)** of your base salary actually paid for such year.

   In accordance with the terms of such bonus plan, payment of each bonus shall be made in a single lump-sum cash payment not later than the last day of the applicable two and one-half (2 ½) month short-term deferral period with respect to such bonus payment, within the meaning of Treasury Regulation Section 1.409A-1(b)(4).

5. **EQUITY COMPENSATION**

   (a) **STOCK OPTIONS.** As a part of your overall compensation, we will recommend to the Compensation Committee of the Board of Directors that you be granted an option (the "**Option**") to purchase **100,000** shares of Accuray common stock at a per share exercise price equal to the fair market value of a share of our common stock on the date of the grant (the "**Grant Date**") as determined in accordance with the Accuray Incorporated 2007 Incentive Award Plan (the "**Incentive Plan**"). All Options are subject to and conditioned on approval of the grant and its terms by the Compensation Committee. Subject to your continued employment, the Options vest with respect to 25% of the shares subject thereto on the first anniversary of the Grant Date, and with respect to an additional 1/48th of the shares subject thereto on each monthly anniversary thereafter, such that the entire Option would be entirely vested on the fourth anniversary of the Grant Date. All Options are subject to the terms and conditions of the Incentive Plan and a stock option agreement in a form prescribed by Accuray (the "**Option Agreement**"), which you will be required to sign as a condition to receiving the Option.

   (b) **RESTRICTED STOCK UNITS**. We will also recommend to the Compensation Committee of the Board of Directors that you be granted **55,000** restricted stock units ("**RSUs**") under the Accuray 2007 Incentive Award Plan. Subject to the your continued service as an Employee through the applicable vesting date, twenty-five percent (25%) of the RSUs shall vest on the first anniversary of the Grant Date and an additional twenty-five percent (25%) of the RSUs shall vest on each of the second, third and fourth anniversaries of the Grant Date. Payment in respect of any vested RSUs will be made to you in whole shares of our common stock as soon as practicable after the applicable vesting date, but in no event later than 60 days after such vesting date. Consistent with the foregoing, the terms and conditions of each RSU shall be set forth in a RSU grant agreement ("**RSU Agreement**") to be entered into by the Company and you which shall evidence the terms of each RSU.

6. **BENEFITS AND PAID TIME OFF**. During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, paid time off, and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 6 will be subject to change from time to time as deemed appropriate and necessary by the Company.

7. TERMINATION OF EMPLOYMENT.

(a) If during the Term of this agreement, you incur a "separation from service" (within the meaning of Section 409A(a)(2)(A)(i) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and Treasury Regulation Section 1.409A-1(h)) ("**Separation from Service**") by reason of (i) a termination of your employment by the Company other than for Cause (as defined below), death or disability, or (ii) the failure of the Company to either (A) extend the term of this Agreement, or (B) prior to the lapse of the term of this Agreement, offer you an employment agreement with a term of at least two years containing severance provisions that are comparable to the median severance benefits for similarly situated executives in the peer group then used by the Compensation Committee of the Board for the purpose of benchmarking executive compensation, as determined by the Compensation Committee in its sole reasonable discretion (iii) a termination of your employment by you for Good Reason (as defined below), and provided that you execute a general release of claims in a form prescribed by the Company (the "**Release**") within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the date of such Separation from Service (the "**Separation Date**") and you do not revoke such Release, and further subject to Section 16(b) below, then, in addition to any other accrued amounts payable to you through the Separation Date (earned but unpaid bonus and paid time off), the Company will, on the sixtieth (60th) day after the Separation Date, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to six (6) months of your annual base salary as in effect immediately prior to the Separation Date, plus a six (6) month health benefit equivalent, which shall be twice the amount that you would be required to pay to continue your group health coverage for the six (6) month period following the Separation from Service, payable whether or not you elect COBRA. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company.

(b) If a Change of Control (as defined in Exhibit A hereto) occurs during the Term of this agreement and if within the three (3) months before and the twelve (12) months after the effective date of the Change of Control, you incur a Separation from Service by reason of (i) a termination of your employment by the Company other than for Cause, death or disability, or (ii) a termination of your employment by you for Good Reason, then, subject to Section 16(b) below, and provided that you execute a general release of claims in a form prescribed by the Company within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the Separation from Service and you do not revoke such Release, and further subject to Section 16(b) below, then in addition to any other accrued amounts payable to you through the Separation Date (earned but unpaid bonus and paid time off), the Company will, on the sixtieth (60th) day after the Separation Date, pay you a lump-sum severance payment (the "**CoC Cash Severance Payment**") in an amount equal to the sum of (x) twenty-four (24) months of your annual base salary as in effect immediately prior to the Separation Date; plus (y) two hundred

percent (200%) of your target annual bonus for the fiscal year of the Company in which such Separation from Service occurs; plus (z) a twenty-four (24) month health benefit equivalent, which shall be twice the amount that you would be required to pay to continue your group health coverage for the twenty-four (24) month period following the Separation from Service, payable whether or not you elect COBRA. In addition to the CoC Cash Severance Benefits described above, each of your then outstanding Options and RSUs shall become fully vested and exercisable immediately prior to the Separation Date. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company, but in no event later than through the end of the year following the year in which your Separation from Service occurs. For clarity, under Change of Control this paragraph (b) shall be in lieu of any similar payments or benefits described above in paragraph (a) of this Section 7.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 7 is conditioned on and subject to your execution and non-revocation of the Release. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 7 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

i) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other material act or material omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, (iii) the violation of Accuray's written Code of Conduct and Ethics that was provided to you, as determined in the Company's reasonable sole discretion, (iv) the violation of the Foreign Corrupt Practices Act (the "***FCPA***"), (v) your material failure to perform the normal and customary duties of your position with the Company as reasonably directed by the Company, provided, that any of the acts or omissions described in the foregoing clauses are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

ii) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent: (i) a material diminution by the Company of your duties and responsibilities hereunder; (ii) a material change in the geographic location at which you must perform services under this letter, provided that in no event will a change to a location within a 35 mile radius of the Company's Sunnyvale corporate headquarters be deemed material for purposes of this clause; or (iii) a material diminution by the Company of your annual base salary, each as in effect on the date hereof or as the same may be increased from time to time; *provided, however,* that a termination of your employment by you shall only constitute a termination for "Good Reason" hereunder if (a) you provide the Company with written notice setting forth the specific facts or circumstances constituting Good Reason within thirty (30) days after date you become aware of the existence of such facts or circumstances, (b) the Company has failed to cure such facts or circumstances within thirty (30) days after receipt of such written notice, and (c) the Separation Date occurs no later than seventy-five (75) days after the initial occurrence of the event constituting Good Reason.

8. **CODE SECTION 280G**.

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. If a reduction in Payments is necessary, reduction shall occur in the following order: (A) cash payments shall be reduced first and in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (B) accelerated vesting of stock awards shall be cancelled/reduced next and in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently granted stock awards will be reduced first), with full-value awards reversed before any stock option or stock appreciation rights are reduced; and (C) employee benefits shall be reduced last and in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced.

(b) All determinations required to be made under this Section 8 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

9. **RESTRICTIVE COVENANTS**.

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 9(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefore, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

10. **COMPANY RULES AND REGULATIONS**. As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook, Code of Conduct and Ethics, or as otherwise promulgated. In addition, as a condition of your employment, you will be required to complete, sign, return, and abide by the Employee Confidentiality and Inventions Agreement.

11. **WITHHOLDING**. The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

12. **ARBITRATION**. Except as set forth in Section 9(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of

California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law, except that the Company shall pay all JAMS arbitration fees, including, but not limited to, the arbitrator's fees and all other administrative fees

and costs in excess of the amount of court filing fees that would be required if the dispute were decided in a court of law.

13. **ENTIRE AGREEMENT**. As of the Effective Date, this letter along with any applicable Option Agreement and RSU Agreement constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group.

14. **SEVERABILITY**. Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

15. **ACKNOWLEDGEMENT**. You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

16. **SECTION 409A OF THE CODE**.

(a) The payments and benefits under this letter are intended to comply with or be exempt from the application of Section 409A of the Code so that none of the payments and benefits to be provided under this Agreement will be subject to the additional tax imposed under Section 409A, and any ambiguities in this Agreement will be interpreted to so comply. Notwithstanding any provision of this letter to the contrary, in the event that the Company determines that any payments or benefits payable hereunder may be subject to Section 409A of the Code, the Company may (without any obligation to do so or to indemnify you for failure to do so) adopt such amendments to this letter or take any other actions that the Company determines are necessary or appropriate to (a) exempt such payments and benefits from Section 409A of the Code in order to preserve the intended tax treatment of such payments or benefits, or (b) comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder. To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury Regulations and other interpretive guidance issued thereunder. Each payment and benefit payable under this Agreement is intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Department of Treasury Regulations.

(b) Notwithstanding anything to the contrary in this letter, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 7 above, shall be paid to you during the six (6)-month period following your Separation from Service to the extent that paying such amounts at the time or times indicated in this letter would result in a prohibited distribution under Section 409A(a)(2)(b)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six (6)-month period (or such earlier date upon which such amount can be paid under Section 409A of the Code without resulting in a prohibited distribution, including as a result of your death), the Company shall pay you a lump-sum amount equal to the cumulative amount that would have otherwise been payable to you during such six-month period.

(c) To the extent that any reimbursements or corresponding in-kind benefits provided to you under this letter are deemed to constitute compensation to you, such amounts will be paid or reimbursed reasonably promptly, but not later than March 15 of the year following the year in which the expense was incurred. The amount of any such payments or expense reimbursements in one year will not affect the expenses or in-kind benefits eligible for payment or reimbursement in any other taxable year, and your right to such payments or reimbursement of any such expenses will not be subject to liquidation or exchange for any other benefit.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Theresa Dadone, Senior Vice President Human Resources. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Euan Thomson, Ph.D.
Name: Euan Thomson, Ph.D.

Title: President & Chief Executive Officer

By: /s/ Darren J. Milliken
Name: Darren J. Milliken
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Kelly Londy: /s/ Kelly Londy

Signed on: 9-14-11

Start Date: 10-1-11

EXHIBIT A

For purposes of this letter, "**Change of Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

EXHIBIT B

The Company will also provide you with the relocation assistance described in the table below. Accuray's professional relocation service provider will assist you in the process. Any amounts taxable to you will be grossed up to cover the related federal and state income tax liabilities. Accuray will also pay for a tax advisor to help you reconcile the 2011 personal tax implications related to the relocation. If you voluntarily terminate your employment with Accuray within one year of your Start Date, a pro-rated portion of paid relocation allowance will be repayable to Accuray immediately. Pro-ration will be based on number of days actually employed within the first year. For example, if you voluntarily resign 3 months after your Start Date, you will responsible for repaying 3/4 of the relocation benefit.

Two Home Finding Trips

- Round trip coach airfare for two people
- Meals $75/day per person
- Lodging 5 nights each trip

Temporary Housing	· Auto rental 5 days each trip · Temporary housing in the Bay Area up to 4 months · Monthly cost not to exceed $4,500
Home Sale / Home Purchase	*Home Sale* · Reimbursement of normal and customary home disposition costs on the sale of your home in Michigan. This may not exceed 6% of sale price of the home. All costs (ex. broker commission, recording fees, etc.) must be pre-approved in writing by Accuray · In the event of a short sale of your home in MI, the reimbursable amount may not exceed $10,000 *Home Purchase* · Reimbursement of normal and customary home purchase costs, not to exceed $10,000
Professional Movers for Contents of Home	· Shipment and moving services include packing at your home in MI, loading and unloading of the truck, unpacking at your new permanent home in CA, and box removal · Shipment of two cars and two pets · Storage up to 120 days
Final Move Trip	· One way airfare for relocating family members · Three nights lodging · Meals not to exceed $75 per/adult and $30 per day/child · Car rental up to 5 days
Return Trips to MI	· 3 return trips to MI to visit relocating family members until the relocation is final (airfare only).
Transfer Allowance	· $25,000 to be paid upon final relocation to permanent housing from temporary housing.

Exhibit 31.1

Certifications

I, Euan S. Thomson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accuray Incorporated, a Delaware corporation;

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

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

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

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

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

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

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

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

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

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

Date: November 8, 2011

/s/ Euan S. Thomson

Euan S. Thomson, Ph. D.
President and Chief Executive Officer

Exhibit 31.2

Certifications

I, Derek Bertocci, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Accuray Incorporated, a Delaware corporation;

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

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

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

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

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

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

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

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

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

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

Date: November 8, 2011

/s/ Derek Bertocci
Derek Bertocci
Senior Vice President and Chief Financial Officer

Exhibit 32.1

Certification of Chief Executive Officer and Chief Financial Officer

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officers of Accuray Incorporated, a Delaware corporation (the "*Company*") hereby certify, to such officers' knowledge, that:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the three months ended September 30, 2011 (the "*Report*") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

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

Date: November 8, 2011

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

/s/ Derek Bertocci
Derek Bertocci
Senior Vice President and Chief Financial Officer