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

FORM 10-K

(Mark One)

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

For the fiscal year ended June 30, 2021

or

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

For the transition period from _____to_____

Commission file number 001-33301

ACCURAY INCORPORATED

(Exact name of registrant as specified in its charter)

DELAWARE	**20-8370041**
(State or Other Jurisdiction of Incorporation or organization)	(I.R.S. Employer Identification No.)

1310 Chesapeake Terrace
Sunnyvale, California 94089
(Address of Principal Executive Offices) (Zip Code)
Registrants' telephone number, including area code: **(408) 716-4600**

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

Title of Each Class	**Trading Symbol(s)**	**Name of Each Exchange on Which Registered**
Common Stock, $0.001 par value per share	ARAY	The Nasdaq Stock Market LLC

Securities registered pursuant to section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒	Non-accelerated filer	☐	Smaller reporting company	☐
						Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant based on the last sale price for such stock on December 31, 2020, the last business day of the registrant's most recently completed second fiscal quarter was: $308,504,310. Shares of the registrant's common stock held by each executive officer, director and 5% stockholder have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of August 6, 2021, the number of outstanding shares of the registrant's common stock, $0.001 par value, was 90,828,661.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement for the Registrant's 2021 Annual Meeting of stockholders (the "2021 Proxy Statement") are incorporated by reference in Part III of this Form 10-K.

ACCURAY INCORPORATED

YEAR ENDED JUNE 30, 2021

FORM 10-K

ANNUAL REPORT

TABLE OF CONTENTS

We own or have rights to various trademarks and tradenames used in our business in the United States or other countries, including the following: Accuray®, Accuray Logo®, CyberKnife®, Hi-Art®, RoboCouch®, Synchrony®, TomoTherapy®, Xsight®, Accuray Precision®, AutoSegmentation™, CTrue™, H™ Series, iDMS®, InCise™, Iris™, CyberKnife M6™ Series, Accuray OIS Connect™, PreciseART®, PreciseRTX®, Treatment Planning System™, TomoDirect™, TomoEdge™, TomoH®, TomoHD®, TomoHDA™, TomoHelical™, TomoTherapy Quality Assurance™, Radixact®, Onrad ™, S7™, and VoLO™.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes 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 expectations and beliefs regarding the effect of the COVID-19 pandemic and the related responses of governments and private industry on our operations and financial results as well as the markets and industry in general; future revenues and expenses; our sales, distribution and marketing efforts; reimbursement rates and its effects on our business; regulatory requirements, including our compliance with applicable regulations; future orders; the radiation therapy market; expectations regarding the economic impact of cancer; our strategy; our products and offerings, including their capabilities and benefits and anticipated benefits to patients and physicians; the factors that contribute to the long-term success of our products; our suppliers and manufacturing facilities; our intellectual property rights; the expected impact of changes in laws and regulations, including regulatory and tax laws; our expectations regarding litigation matters; our expectations regarding future capital requirements; our expectations regarding our liquidity and capital resources; our earnings or other financial results; our expectations regarding new products and features; our expectations regarding our joint venture with CNNC High Energy Equipment (Tianjin) Co., Ltd (the "JV"); our expectations regarding our debt, including our outstanding convertible notes and credit facility; our expectations regarding the effects of foreign currency fluctuations; and other statements using words such as "anticipates," "believes," "can," "could," "estimates," "expects," "forecasts," "intends," "may," "plans," "projects," "seek," "should," "will" and "would," and words of similar import and the negatives thereof. Accuray Incorporated ("we," "our," or the "Company") has 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. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. 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. Factors that could contribute to such differences include, but are not limited to, those discussed under "Risk Factors" in Part I, Item 1A of this report. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K and are subject to business and economic risks. We undertake no obligation to update or revise any forward-looking statements to reflect any event or circumstance that arises after the date of this report except as required by applicable law.

PART I

Item 1. BUSINESS

The Company

Accuray Incorporated is a radiation therapy company that develops, manufactures, sells and supports market-changing solutions that are designed to deliver radiation treatments for even the most complex cases, while making commonly treatable cases even more straightforward, to meet the full spectrum of patient needs. In comparison to conventional linear accelerators, we believe our treatment delivery, planning, and data management solutions provide better accuracy, flexibility, and control; fewer treatments with shorter treatment times; and the technology to expand beyond cancer treatment, making it easier for clinical teams around the world to provide treatments that help patients get back to living their lives, faster.

Our solutions are designed to advance patient care: during each individual treatment, throughout the treatment process, and at each stage of the cancer treatment journey, from curative to palliative treatments. Our solutions provide:

- Novel artificial intelligence driven radiation therapy systems that automatically adapt treatment delivery for targets that move, synchronizing the radiation beam with the target's motion in real-time throughout treatment delivery.
- Automated tools help to identify interfraction changes for which re-planning is clinically beneficial and facilitate adaptation of the radiation dose precisely to the patient's tumor.
- Distinctive software that accelerates and automates the re-planning process to make re-treatment of a previously irradiated area more efficient for practices and more effective for patients.

Our innovative technologies, the CyberKnife® and TomoTherapy® platforms, including the Radixact® System, our next generation TomoTherapy platform, are designed to deliver advanced treatments, including stereotactic radiosurgery (SRS), stereotactic body radiation therapy (SBRT), intensity modulated radiation therapy (IMRT), image-guided radiation therapy (IGRT), and adaptive radiation therapy (ART). The CyberKnife and TomoTherapy platforms have complementary clinical applications with the same goal: to empower customers to deliver the most precise and accurate treatments while still minimizing dose to healthy tissue, helping to reduce the risk of side effects that may impact patients' quality of life. Each of these systems serves patient populations treated by the same medical specialty, radiation oncology, with advanced capabilities. The CyberKnife platform is also used by neuro-radiosurgeons to treat patients with tumors in the brain and neurologic disorders. In addition to these platforms, we also provide services, which include post-contract customer support (warranty period services and post warranty services), installation services, training, and other professional services.

We were incorporated in California in 1990 and commenced operations in 1992. We reincorporated in Delaware in 2007. Our principal offices are located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and our telephone number is (408) 716-4600.

In March 2020, the World Health Organization declared the outbreak of a strain of coronavirus, SARS-CoV-2, which causes novel coronavirus disease 2019 ("COVID-19") pandemic. The COVID-19 pandemic has had, and continues to have widespread, rapidly evolving, and unpredictable impacts on global society, economies, financial markets, and business practices. Federal and state governments implemented measures in an effort to contain the virus, including social distancing, travel restrictions, border closures, limitations on public gatherings, work from home, supply chain logistical changes, and closure of non-essential businesses, and, while there has been some reopening and reduction of restrictions, the emergence of new variants and increased cases has led to the reimplementation of restrictions in many areas. To protect the health and well-being of our employees, suppliers, and customers, we have made substantial modifications to employee travel and suspended non-essential work travel, implemented remote work arrangements as employees are advised to work from home, and cancelled or shifted most of our conferences and other marketing events to virtual through fiscal year 2021. The COVID-19 pandemic has impacted and may continue to impact our business operations, including our employees, customers and partners, and there is substantial uncertainty in the nature and degree of its continued effects over time. Refer to Management's Discussion and Analysis of Financial Condition and Results of Operations (Part II, Item 7 of this Form 10-K) for further discussion regarding the impact of the COVID-19 pandemic on our fiscal year 2020 financial results.

Market Overview

Despite significant improvements in cancer diagnosis and treatment, cancer rates continue to increase globally and remain a leading cause of death. According to the World Health Organization, cancer is one of the leading causes of death globally and was responsible for nearly 10 million deaths in 2020. Globally, about 1 in 6 deaths are due to cancer, and the economic impact of cancer is significant and is expected to increase. The total annual economic cost of cancer in 2017 was estimated at approximately $1.16 trillion. In addition, while the real impact of the COVID-19 pandemic on cancer prevention, diagnosis and treatment will not be known for many years, the American Cancer Society ("ACS") anticipates that decreased resources and access to care will result in "lower incidence (in 2020), higher mortality and decreased survival in the future."

Cancers can be broadly divided into two groups: solid tumor cancers, which are characterized by the growth of malignant tumors within the body in areas such as the brain, lung, liver, breast or prostate, and hematological, or blood-borne cancers, such as leukemia. The most common causes of cancer deaths are cancers of lung, liver, colorectal, stomach and breast. The ACS estimates that solid tumor cancers will account for approximately 1.6 million, or approximately 92% of new cancer cases diagnosed annually.

Traditional methods for the treatment of solid tumor cancers include chemotherapy, surgery and radiation therapy. The most common type of radiation therapy is external beam radiation therapy, in which patients are treated with high-energy radiation generated by medical equipment external to the patient. The global radiotherapy equipment and software market has three main segments: Linear Accelerators (linacs), Treatment Planning Systems, and Radiation Therapy Simulators. Approximately 60% of cancer patients worldwide will undergo some form of radiation therapy during the course of their treatment. While radiation therapy is widely available in the United States and Western Europe, many developing countries currently do not have a sufficient number of linacs to adequately treat their domestic cancer patient populations. We believe increasing demand for advanced medical treatments in many international markets and growth in cancer incidences worldwide will continue to drive demand for linacs with more sophisticated capabilities in the coming years.

Emerging markets are especially underequipped with external beam radiation therapy systems. According to a publication called the Lancet Oncology Commission in 2015, radiation therapy is required in more than half of the newly diagnosed cancer patients. There was an estimated shortage of over 15,000 linacs globally in 2015, expected to grow to over 21,000 by 2035. This gap is most pronounced in low and middle income countries, where only 10% of patients have access to radiotherapy. China alone is estimated to have a shortfall of over 5,000 systems because of increasing cancer incidence and an aging population that is estimated to more than double by 2040.

Radiation Therapy

Radiation therapy uses high-energy X-rays (photons) to destroy cancer cells and shrink or control the growth of tumors. Radiation therapy works by exposing clusters of cancer cells, or tumors, to a dose of high energy radiation sufficient to cause cell death and prevent cells from multiplying. During external beam radiation therapy, the clinician's goal is to target radiation delivery to the tumor as precisely as possible in order to maximize the radiation dose delivered to cancerous tissue and minimize the exposure of healthy tissue. Recent advances in radiation therapy technologies have allowed clinicians to further improve the ability to target the radiation dose more precisely at cancer cells while minimizing the exposure of healthy tissue. These advances include the following:

Intensity-modulated radiation therapy. Intensity-modulated radiation therapy (IMRT) involves varying, or modulating, the radiation beam intensity across the treatment area. This technique aims to conform the high dose region of the radiation beam more closely with the shape of the tumor, enabling the delivery of higher doses of radiation to tumors with a reduced impact on surrounding healthy tissue.

Image-guided radiation therapy. Image-guided radiation therapy (IGRT) involves delivering radiation guided by images of the treatment area taken shortly before and/or during treatment using CT scan, X-ray, ultrasound or other imaging technologies. By combining imaging with radiation treatment, clinicians can adjust the patient's position relative to the radiation source prior to each treatment to target the tumor more precisely.

Stereotactic Radiosurgery and Stereotactic Body Radiation Therapy. Radiosurgery is a form of radiation therapy that uses precisely targeted high doses of radiation to destroy tumors. Radiosurgery is non-invasive; there is no incision involved. Stereotactic radiosurgery (SRS) and stereotactic body radiation therapy (SBRT) both provide a high degree of targeting accuracy with very high doses of extremely precise, externally delivered radiation, thereby maximizing the cell-killing effect on the tumor(s) while minimizing the dose to nearby healthy tissue. SRS and SBRT are advanced external beam radiation treatment techniques used to deliver (ultra) hypofractionated radiation therapy. SRS is used to treat conditions within the brain, while SBRT is commonly used to treat tumors outside the brain. SRS and SBRT typically involve the delivery of a single high-dose radiation treatment or a few fractionated radiation treatments (usually up to five) to ablate (destroy) the tumor. To achieve the accuracy and precision required for both SRS and SBRT, image guidance during treatment, the ability to adjust the aim of the beam in real-time to correct for tumor motion, and a wide range of beam angles, are critical for treatment.

Adaptive radiation therapy. Adaptive radiation therapy (ART) involves adjusting a patient's radiation therapy plan during or between fractions to account for changes in the patient's anatomy, the amount and location of the radiation received by the patient, and the size, shape and location of the tumor. While there is no widely accepted definition of adaptive radiation therapy, it has been characterized to include as little as an adjustment to the physical position of the patient relative to the radiation source prior to treatment, as occurs during IGRT, rather than an adjustment to the treatment plan. Our approach is based on the belief that adaptive radiation therapy requires monitoring and adjustments to the treatment plan facilitated by both the regular acquisition of updated quantitative images showing the location, size, and shape of the tumor, and verification of the radiation dose received by the patient throughout the entire course of treatment.

Hypofractionation. Hypofractionation involves the delivery of higher doses of radiation per fraction over fewer total fractions than are used in conventional radiation therapy. Hypofractionated radiation therapy has been proven to deliver clinical outcomes as good as conventional fractionation, while dramatically reducing both the number of treatments and the total cost of care. The advent of innovative technological features in radiation therapy treatment planning and delivery has enabled clinicians to maximize the radiation dose administered to tumors in the patient, improving local tumor control and, in some cases, improving patient survival rates. Patients, too, benefit from the efficiency of hypofractionated radiation therapy. Fewer treatments means fewer clinical visits and a faster return to family, friends and other aspects of life. Hypofractionation is often used to treat small targets throughout the body, including the brain, head and neck, spine, lung and prostate. It is also being used more frequently in clinical applications where the radiobiology is appropriate for fewer fractions of higher doses, including the breast.

Despite advances in radiation therapy techniques, most commercially available radiation therapy systems from other manufacturers still present significant limitations that restrict clinicians' ability to provide the most precise treatment possible. These limitations include:

- ***Limited versatility and precision.*** The C-arm configuration of traditional radiation therapy systems has limitations because of its size and mechanical structure. C-arm linac architecture is constrained to delivering radiation in a single plane (coplanar) thus limiting its radiation delivery capability for complex and advanced cases. Additionally, most previously existing multi-leaf collimator MLCs, which modulate or shape the radiation beams, have mechanical limitations that reduce their beam-shaping ability and the speed at which they operate. These design elements limit the motion and dynamic range of IMRT intensities capable of being delivered by traditional radiation therapy systems and often make it challenging to achieve the precision needed to maximize dose to the tumor while minimizing damage to surrounding healthy tissue and potential associated side effects. Such imprecision may prevent clinicians from treating tumors near sensitive anatomic structures, such as the eye or the spinal cord, or from re-treating patients in an area of the body that was previously exposed to radiation and may be unable to tolerate additional exposure.

- ***Limited ability to provide quantitative images.*** Precise radiation therapy requires frequent images that accurately depict the size, shape and location of the tumor. Many traditional radiation therapy systems use imaging technologies that are not able to generate a quantitative assessment of the patient's and/or target volume's position. The lack of quantitative imaging prevents clinicians from understanding the actual amount of radiation that was received by tissue within the patient's body. Since it is common for internal organs to shift and for the size of the tumor to change during the course of treatment, failure to

adapt the plan throughout the course of treatment may result in a portion, or potentially all, of the radiation dose missing the tumor and instead being absorbed by healthy tissue

- ***Failure to integrate multiple functions.*** The basic architecture for traditional radiation therapy systems pre-dates many recent advances that enable integrated imaging, treatment planning, dose verification or quality assurance capabilities necessary for more advanced treatment protocols. Some conventional systems have been subsequently adapted to include certain elements of this functionality by incorporating modular add-on devices to legacy linac designs. These separate modular components can provide imaging, treatment planning, quality assurance procedures or post-treatment analysis functionality. However, this add-on architectural approach can have safety, accuracy, and workflow implications because of the manual methods used for checking proper system operation.

Development of Radiosurgery

Advanced radiation therapy systems designed to deliver radiosurgery or stereotactic body radiation therapy differ from traditional radiation therapy systems in that they are designed to deliver a very high cumulative dose of radiation, in a single or a small number of treatments precisely targeted at the tumor rather than at a region that consists of the tumor plus healthy tissue that surrounds the tumor area. The more accurate delivery of radiation allows higher doses to be delivered, increasing the probability of tumor cell death and better local control. In addition, radiosurgery can be administered to patients who have inoperable or surgically complex tumors, or who may prefer a clinically effective, non-surgical treatment option.

Our Strategy

Our goal is to develop equipment and technology that enable physicians to deliver precise, customized, leading-edge treatments that help patients with cancerous or benign tumors, or neurologic disorders, get back to living their lives, faster. We endeavor to achieve this goal by expanding the clinical options for healthcare providers, helping them offer the best radiation treatment for each patient and by providing patients with treatment tailored to their specific needs. Our vision is to expand the curative power of radiation therapy to improve as many lives as possible. We believe our current technologies and our future innovations can help to achieve this. Some of the key elements of our strategy include the following:

Increase physician adoption and patient awareness to drive utilization. We are continually working to increase adoption and awareness of our systems and demonstrate their advantages over other treatment methods, including more conventional approaches. We hold and sponsor symposia and educational meetings and support clinical studies to demonstrate the clinical benefits of our systems. We regularly meet with clinicians to educate them on the expanded versatility that our systems offer in comparison to more traditional radiation therapy products or surgery. We are continuously expanding our digital and social presence to reach and educate a broader audience of physicians and patients. To support awareness of all our product offerings, we assist our customers with increasing patient awareness in their communities by providing them with tools to develop marketing and educational campaigns.

Continue to expand the radiosurgery market. The CyberKnife System is a robotic radiosurgery system capable of treating tumors throughout the body. There are now over 1,900 peer reviewed publications supporting use of the CyberKnife System in the treatment of various cancer and tumor types. Radiosurgery is a commonly used procedure among neuro radiosurgeons who require the high level of precision found with surgery yet want to offer their brain tumor patients a non-invasive option. With more than two decades of clinical evidence, the CyberKnife System offers distinct advantages in the treatment of diseases in the head, base of the skull, and spine. These areas of the body require extremely accurate treatment because of the proximity of the tumors to critical structures that may impact a person’s ability to perform basic functions and to think, see, hear and walk.

Continue to innovate through clinical development and collaboration. The clinical success of our products is largely the result of the collaborative partnerships we have developed over the last decade with clinicians, researchers and patients. We proactively seek out and rely on constructive feedback from system users to learn what is needed to enhance the technology. As a result of this collaborative process, we continually refine and upgrade our systems, thereby improving our competitive position in the radiation therapy and radiosurgery markets. Upgrades to our systems are designed to address customer needs in the areas of improving the ease of use and accuracy of treatment, decreasing treatment times, and improving utilization for specific types of tumors.

Expand sales in international markets. We intend to continue to increase our sales and distribution capabilities outside of the United States to take advantage of the large international opportunity for our products. Outside of the United States, we currently have regional offices in Morges, Switzerland, Hong Kong, China, Shanghai, China and Tokyo, Japan and direct sales staff in most countries in Western Europe, Japan, India and Canada. Combined with distributors in Eastern Europe, Russia, the Middle East, the Asia Pacific region and Latin America, our sales and distribution channels cover more than 92 countries. However, many of these countries are not highly developed at this time and therefore sales opportunities may be limited. We intend to increase our international revenue by focused additions of direct sales personnel in targeted areas to further penetrate our most promising international markets, and additional distributors strategic partnerships, or joint ventures, where opportune.

Strategic partnerships and joint ventures. We intend to pursue strategic partnerships and joint ventures we believe will allow us to complement our growth strategy, increase sales in our current markets and expand into adjacent markets, broaden our technology and intellectual property, and strengthen our relationships with our customers. In fiscal 2016 we signed an agreement with RaySearch Laboratories AB, which led to the integration of treatment planning support for the TomoTherapy, Radixact and CyberKnife Systems in the RayStation treatment planning system (TPS). In fiscal 2017, we signed an agreement with Photo Diagnostic Systems, Incorporated to enhance image quality of our TomoTherapy System through an enhanced tomographic reconstruction software. In fiscal 2019, our wholly-owned subsidiary, Accuray Asia Limited ("Accuray Asia"), entered into an agreement with CNNC high Energy Equipment (Tianjin) Co., Ltd. (the "CIRC Subsidiary"), a wholly-owned subsidiary of China Isotope & Radiation Corporation, to form a joint venture, CNNC Accuray (TianJin) Medical Technology Co. Ltd. (the "JV"), to manufacture and sell radiation oncology systems in China.

Our Products

From oncology to neuro-radiosurgery and beyond, our solutions enable clinicians to deliver shorter, more personalized, and more effective treatments. Our suite of radiation delivery devices includes the CyberKnife and the Radixact System, our next generation TomoTherapy platform. We also offer our Onrad Treatment Delivery System, a configuration of the TomoTherapy System designed specifically to meet the needs of the market in China. In addition, our portfolio includes comprehensive software solutions to enable and enhance the precise and efficient radiotherapy treatment with our advanced delivery systems.

The CyberKnife Platform

The CyberKnife platform is comprised of the only full-body stereotactic radiosurgery (SRS) and stereotactic body radiation therapy (SBRT) robotic systems on the market - including the CyberKnife M6 and S7 Systems. These systems have the option of fixed collimators plus the Iris Variable Aperture Collimator (FI), fixed collimators plus the InCise MLC (FM) and fixed collimators plus the Iris Variable Aperture Collimator plus the InCise MLC (FIM).

Using continual image guidance technology and computer controlled robotic mobility, the CyberKnife platform are designed to deliver precise radiation from a wide array of beam angles and automatically track, detect and correct for tumor and patient movement in real-time throughout the procedure, enabling artificial-intelligence (AI) driven delivery of precise, high dose radiation with sub-millimeter accuracy without manual user intervention. This design is intended to enable the CyberKnife platform to deliver high-dose radiation with precision, which minimizes damage to surrounding healthy tissue and eliminates the need for invasive head or body immobilization frames. Our patented image-guidance technology correlates low dose, real-time treatment X-rays with images previously taken with a CT scan of the tumor and surrounding tissue to direct each beam of radiation with increased precision versus treatments without this real-time feedback. This, in turn, enables delivery of a highly conformal, non-isocentric dose of radiation to the tumor, with minimal radiation delivered to surrounding healthy tissue. With its autonomous ability to track, detect and correct for even the slightest tumor and patient movement throughout the entire treatment, the CyberKnife platform is intended to provide patients with an effective and accurate treatment.

Our configurations of CyberKnife platforms include the following:

The CyberKnife M6 Series with configurations of FI, FM and FIM. The M6 Series is available for sale in most major markets globally. It is used with the following options: a fixed collimator (F), an Iris collimator (I) or a multileaf collimator (M). With the InCise MLC, clinicians can deliver the same precise SRS and SBRT treatments they have come to expect with the CyberKnife platform, faster and for a wider range of tumor types than prior configurations. The InCise MLC and IMRT planning tools enable expansion of indications that can be treated with a CyberKnife to include many IMRT indications. The CyberKnife M6 Series includes disease-specific tracking and treatment delivery solutions for brain, spine, lung and prostate tumors, treatment speed improvements, more options to configure the treatment room, expanded number of nodes leading to more coverage and sparing of healthy tissue.

The CyberKnife S7 Series with configurations of FI+, FM and FIM. The S7 Series can be sold in most major markets globally. It is used with the following options: a fixed collimator (F), an Iris collimator (I) or a multileaf collimator (M). With the InCise MLC, larger tumors previously thought untreatable with radiosurgery and SBRT are able to be treated efficiently and with unrivaled accuracy and tissue sparing. The InCise MLC and IMRT planning tools enable expansion of indications that can be treated with a CyberKnife System to include many IMRT indications. The CyberKnife S7 Series includes disease specific tracking and treatment delivery solutions for brain, spine, lung and prostate tumors, treatment speed improvements, more options to configure the treatment room, expanded number of nodes leading to more coverage and sparing of healthy tissue. The CyberKnife S7 System combines speed, advanced precision, and real-time artificial intelligence (AI)-driven motion tracking and synchronization treatment delivery for all SRS and SBRT treatments, in as little as 15 minutes.

We believe the CyberKnife platform offer clinicians and patients the following benefits:

The only truly robotic system in the market. Combining the benefits of continual image guidance and non isocentric, non coplanar treatment delivery, the CyberKnife platform is designed to precisely tailor radiation delivery to minimize dose to healthy tissue while maintaining sub millimeter accuracy and precision even for targets that move during treatment. We believe the CyberKnife platform is the clinical solution to choose when accuracy, flexibility, speed, and patient comfort are essential.

Treatment of inoperable or surgically complex tumors. The CyberKnife platform may be used to target tumors that cannot be easily treated with traditional surgical techniques because of their location, number, size, shape or proximity to vital tissues or organs, or because of the age or health of the patient. The CyberKnife platform's intelligent robotics enable the precise targeting of a tumor, while at the same time minimizing damage to surrounding healthy tissue.

Treatment of tumors throughout the body. The CyberKnife platform has been cleared by the FDA to provide treatment planning and image-guided radiation treatment for tumors anywhere in the body where radiation treatment is indicated. By comparison, traditional frame-based radiosurgery systems are generally limited to treating brain tumors and use cobalt 60 radioactive material, which decays over time and is difficult to replace. The CyberKnife platform is being used for the treatment of primary and metastatic tumors outside the brain, including tumors on or near the spine and in the lung, liver, prostate, kidney and pancreas in addition to tumors in the brain, with the same sub-millimeter accuracy in every disease site.

Real-time tracking of tumor movement. The CyberKnife platform is designed to enable the treatment of tumors that change position during treatment. The systems offer the following features which enhance image-guided robotic radiation delivery: Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology, Xsight Lung Tracking System, Xsight Spine Tracking System, InTempo Adaptive Imaging System and Lung Optimized Treatment.

Significant patient benefits. The CyberKnife platform maximizes patient comfort. Patients may be treated with the CyberKnife platform on an outpatient basis without anesthesia and without the risks and complications inherent in traditional surgery. Patients do not require substantial pre treatment preparation, and typically there is little to no recovery time or hospital stay associated with CyberKnife platform's treatments. In addition, the CyberKnife platform eliminates the need for an invasive rigid frame to be screwed into the patient's skull or affixed to other parts of the body, or for trained breath holding or gating instruments.

Additional revenue generation through increased patient volumes. We believe clinical use of the CyberKnife platform allows our customers to effectively treat patients where extreme precision and ability to account for motion

are important, and patients who otherwise would not have been treated with radiation or who may not have been good candidates for surgery.

Upgradeable modular design. The CyberKnife platform has a modular design, which facilitates the implementation of upgrades that often do not require our customers to purchase an entirely new system to gain the benefits of new features. We continue to work to develop and offer new clinical capabilities enhancing ease of use, reducing treatment times, improving accuracy and improving patient access. The main components and options of the CyberKnife platform include: the compact X-band linear accelerator; robotic manipulator, the real-time image-guidance system with continuous target tracking and correction; X-ray sources; image detectors. Key features of these components include:

Robotic manipulator arm. The robotic manipulator arm, with six-degrees-of-freedom range of movement, is designed to move around the patient to position the linac and direct the radiation with an extremely high level of precision and repeatability. The manipulator arm provides what we believe to be a unique method of positioning the linac to deliver doses of radiation from nearly any direction and position, without the limitations inherent in gantry-based systems, creating a non-isocentric composite dose pattern with a high level of conformance to the shape of each treated tumor. This flexibility enhances the ability to diversify beam trajectories and beam entrance and exit points, helping to minimize risks of radiation damage to healthy cells near the tumor. Furthermore, the rapid response time of the manipulator arm allows tracking of tumors that move with respiration.

Real-time image-guidance system with continuous target tracking and correction. Without the need for clinician intervention or treatment interruption, the CyberKnife platform's real-time image-guided robotics are designed to enable continuous monitoring and correction for patient and tumor movements throughout each treatment as it is being delivered.

X-ray sources. The low-energy X-ray sources generate the X-ray images that help determine the location of bony or other anatomic landmarks, or implanted fiducials, which are used for tracking throughout the entire treatment.

Image detectors. The image detectors capture high-resolution anatomical images throughout the treatment. These live images are continually compared to the patient's CT scan to determine real-time patient positioning. Based on this information, the robotic manipulator automatically corrects for detected movements.

In addition to the main components listed above, we also offer the following components and options: Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology; Xsight Spine Tracking System; Xsight Lung Tracking System; Lung Optimized Treatment; RoboCouch Patient Positioning System; Xchange Robotic Collimator Changer; InTempo Adaptive Imaging System; Iris Variable Aperture Collimator; and the InCise MLC. Key features of some of these components are as follows:

Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology. The Accuray proprietary Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology is a collection of unique hardware and software technologies that enables personalized real-time adaptive delivery of radiation treatment to targets while they are in motion by synchronizing the treatment delivery beam position to the target location precisely and accurately during the delivery of a treatment fraction. Synchrony is the only technology that uses artificial intelligence, through image guidance, to automatically adapt and synchronize the radiation beam to the position of the tumor if and when it moves during treatment, enabling the delivery of highly conformal radiation beams while minimizing dose to healthy tissue. The beams of radiation are delivered continuously throughout the treatment session as the patient behaves naturally. Synchrony is used to continuously track tumors that move with respiration as beams are synchronized in real time to tumor position while adapting to changes in breathing patterns. The Synchrony technology provides what we believe is unsurpassed clinical accuracy for tumors that move with respiration without the need for implanted fiducials. It makes it possible and practical for clinicians to deliver radiation dose with sub millimeter precision and accuracy, even for tumors that move with respiration.

Xsight Tracking System. The Xsight Spine and Lung Tacking Systems allow for tracking of tumors without the need for implanted markers in the spine and the lung.

Lung Optimized Treatment. An integrated suite of tools that provides a complete fiducial-free clinical solution for lung cancer patients and optimizes non-invasive lung SBRT treatments.

InTempo Adaptive Imaging System. The InTempo Adaptive Imaging System is designed to optimize imaging frequency during prostate treatments and uses time-based image guidance to assist with tracking and correcting non-predictable intrafraction target motion.

Iris Variable Aperture Collimator. The Iris Variable Aperture Collimator enables delivery of beams in 12 unique sizes with a single collimator, which significantly reduces treatment times and the total radiation dose delivered to the patient.

InCise Multileaf Collimator. The InCise MLC, originally designed for the CyberKnife M6 Series, is also available on the CyberKnife S7 Systems. It is designed to deliver the same precise SRS and SBRT treatments clinicians expect from the CyberKnife platform, while significantly reducing treatment times. With the InCise MLC, the CyberKnife M6 Series can be used to treat larger and irregular tumors more efficiently.

The TomoTherapy Platform, including the Radixact System, our next-generation TomoTherapy platform

The TomoTherapy platform includes the Radixact System, the next-generation TomoTherapy platform, which includes configuration options of X5, X7 and X9, and the TomoTherapy H Series, with configuration options of TomoH, TomoHD, and TomoHDA. The Radixact System has been cleared in most major markets globally. The TomoTherapy platform consist of fully integrated and versatile radiation therapy systems used by healthcare professionals in the treatment of a wide range of cancer types. We believe the TomoTherapy platform offers clinicians and patients the following benefits:

Versatile treatment capabilities. The TomoTherapy platform's ring gantry architecture enables precise and efficient treatments with a high degree of dose conformity. The high-speed binary MLC is integrated with the linac and consists of 64 individual low leakage tungsten leaves that move across the beam to either block or allow the passage of radiation, effectively modulating and shaping the beam as it is emitted. The combination of the ring gantry and the high-speed MLC enable treatment to be delivered continuously in a 360-degree helical pattern around the patient's body (which we refer to as TomoHelical). Additionally, the TomoDirect feature provides the TomoTherapy platform with added versatility, enabling the delivery of high quality, fixed angle beams for those cases suited to simple tangential beam radiation delivery. All TomoTherapy platform systems enable an operator to provide non-isocentric 3D conformal radiotherapy, IG- IMRT, or stereotactic treatments within a typical cylindrical volume of 40 centimeters in diameter and up to 135 centimeters in length. This expansive treatment field allows single or multiple tumors, located anywhere in body, to be treated in a single session. The TomoTherapy platform's versatility, efficiency and precision offer clinicians an extensive range of effective treatment possibilities.

Real-time tracking of tumor movement. The Accuray proprietary Synchrony® Motion Synchronization and Real-Time Adaptive Radiotherapy Technology is a collection of unique hardware and software technologies that enables personalized real-time adaptive delivery of radiation treatment to targets while they are in motion by synchronizing the treatment delivery beam position to the target location precisely and accurately during the delivery of a treatment fraction. Synchrony is the only technology that uses artificial intelligence, through image guidance, to automatically adapt and synchronize the radiation beam to the position of the tumor if and when it moves during treatment. The beams of radiation are delivered continuously throughout the treatment session as the patient behaves naturally. Synchrony can be used on the Radixact System to adapt treatment delivery for tumors that move as a result of bodily processes, including respiration and digestion, as well as patient movement. Synchrony treatments are truly personalized, as delivery is adapted to the individual's unique movements throughout treatment delivery. If movement changes during treatment, delivery is adapted for that unique change. The Synchrony technology makes it possible and practical for clinicians to deliver radiation dose with accuracy and precision, even for tumors that move. Synchrony helps to maximize treatment effectiveness and minimize dose to surrounding healthy tissue because it accounts for the current and changing conditions of the patient during treatment delivery.

Diagnostic-like quality kVCT images that enable better identification of tumors, dose verification and treatment planning We recently launched ClearRT™ helical kVCT imaging technology for the Radixact System. ClearRT imaging brings low dose diagnostic-like kVCT imaging quality, the largest imaging field of view available

on a radiation delivery system at 50 cm (diameter) by 135 cm (long), and speed, as evidenced by its ability to capture a 1-meter image in only 1 minute. ClearRT delivers enhanced imaging capabilities compared to conventional linear accelerator systems that rely on cone-beam CT (CBCT) imaging and as an alternative to MR-based radiation therapy systems that can be complex and cost prohibitive to use. ClearRT offers excellent uniformity and low noise across the entire image, improved soft tissue visualization and exceptional spatial resolution, which is intended to enhance the versatility and efficiency of the Radixact System in the radiation therapy department.

Integrated treatment system for precise radiation delivery. We believe the integration of our proprietary imaging technologies, treatment planning and helical radiation delivery mode enables highly accurate and precise radiation therapy. Our planning software allows clinicians to establish the contours of a tumor and any normal radio-sensitive structures in close proximity to the treatment beam. The TomoTherapy platform uses an intelligent dose optimization algorithm to ensure the radiation beam conforms to the patient's tumor and minimizes exposure to surrounding healthy tissue structures, providing a highly-targeted and effective dose distribution. These features significantly benefit patients by increasing the radiation delivered to cancerous tissues while minimizing damage to nearby healthy tissues, thus also minimizing side effects.

Efficient clinical workflow for Image-Guided Radiation Therapy, or IGRT, and adaptive radiation therapy. The TomoTherapy platform integrates into a single system all of the key elements for radiation therapy, including treatment planning, CT image-guided patient positioning, treatment delivery, quality assurance and adaptive planning. The imaging and treatment planning capabilities of many traditional systems are more modular or require cumbersome add-ons or separate treatment planning systems that result in clinicians taking more steps between scanning, planning and treatment of patients. Conversely, the integrated CTrue IR imaging and treatment features of the Radixact Systems allow clinicians to scan, plan and treat cancer patients efficiently. Treatment plans as well as daily images can be easily accessed remotely, enabling clinical teams to collaboratively work together, regardless of location, ensuring high quality plan development and delivery. Additionally, ClearRT provides clear, high-fidelity images that will reduce the time required for patient imaging and registration, a crucial part of the treatment delivery process, thereby enabling clinical staff to serve more patients. Also, ClearRT helical kVCT images will be available within the Accuray PreciseART® automated dose trending tool for clinicians to evaluate if plan adaptation would be beneficial, enabling the most personalized patient care.

Low barriers to installation and implementation. All external beam radiation systems must be housed in rooms that have special radiation shielding to capture any radiation not absorbed by the patient. The TomoTherapy platform's size and self-contained design allow customers to retrofit them into existing treatment rooms previously used for legacy radiation therapy systems and avoid, or reduce, the significant construction costs that can be associated with building new, larger treatment rooms, which are often required of other radiation therapy systems. With both imaging and radiation delivery capabilities integrated on a ring gantry, the TomoTherapy and Radixact Systems require less space than other linac systems, which use large moving arms to position the linac or incorporate adjacent imaging equipment used for treatment planning. In addition, because the TomoTherapy and Radixact Systems have an integrated radiation beam stop, which shields radiation that passes through the patient, they require less radiation shielding in treatment room walls as compared to traditional systems. We also preassemble, test and commission each TomoTherapy and Radixact System at our manufacturing facility, and ship the system almost fully assembled. This process typically allows radiation "beam on" within four days after delivery and first patient treatments to begin within 14 to 28 days after delivery.

Platform for further technological advancements in adaptive radiation therapy. We believe the Radixact System is uniquely positioned to enable truly adaptive radiation therapy because of its ability to provide daily, quantitative images, high speed delivery of radiation from fixed beam angles or helically from 360 degrees around the body and real time verification of the dose received by the patient. We believe the combination of these design features and our integrated treatment planning and optimization software will allow us to continue to enhance the Radixact System's adaptive capabilities to enable clinicians to routinely and easily adjust a patient's treatment as needed, thereby remaining true to the intent of the original treatment plan.

In addition to the functionality listed above, the TomoTherapy and Radixact Systems may be enhanced with the following product options: TomoDirect Mode and TomoEdge Delivery. Key capabilities of these options are as follows:

TomoDirect Mode. TomoDirect is standard on the TomoTherapy HDA model and Radixact X7 and X9 models. The TomoDirect mode is a discrete angle, non-rotational delivery mode that enables the user to create a treatment plan that defines target-specific gantry angles. Treatment delivery is quickly completed for each beam angle. The TomoDirect mode enables users to plan and treat routine cases with greater efficiency, while achieving the quality of the TomoTherapy platform's unique beamlet-based delivery.

TomoEdge Delivery. TomoEdge is standard on the TomoTherapy HDA model and Radixact X7 and X9 models. By dynamically varying the width of the collimator jaws during treatment delivery, dose to normal healthy tissues immediately adjacent to the tumor is reduced, helping to minimize the risk of radiation side effects. Additionally, overall treatment time is shortened because the jaws opening can be effectively tailored to the size of the tumor, enabling more efficient dose coverage. The resulting gains in treatment quality and speed expand the TomoTherapy and Radixact Systems' clinical and market reach within the conventional and stereotactic radiotherapy spaces.

Our Software Solutions

Our Accuray Precision Treatment Planning with iDMS Data Management Systems provide fully integrated treatment planning and data management systems for use with all compatible Accuray platforms.

Accuray Precision Treatment Planning. With a streamlined and intuitive Windows-based interface, Accuray Precision Treatment Planning System enables clinicians to efficiently generate high quality radiation therapy treatment plans for all case types. It is a complete planning solution, including multi-modality image fusion with proprietary deformable image registration algorithm, comprehensive suite of contouring tools, AutoSegmentation auto-contouring options for head and neck, brain, and prostate, side-by-side treatment plan comparison, plan summation and evaluation. It supports treatment plan creation for all case types with TomoHelical, TomoDirect IMRT and 3D CRT planning mode on both Radixact and TomoTherapy Systems enabled with iDMS Data Management Systems. It also supports planning for all case types on CyberKnife platforms, including Frameless Intracranial Radiosurgery, Fiducial-Free Lung Tracking with Dynamic Motion Synchronization, SBRT, for the spine, abdomen and pelvis, as well as IMRT. It provides fast and accurate dose computation engines for both Accuray platforms, including Monte Carlo dose calculation for the CyberKnife InCise multileaf collimator and VOLO™ Technology for the CyberKnife, Radixact and TomoTherapy Systems. The VOLO solution features high-speed parallel processing for both dose calculation and optimization that empowers clinicians to create highly customized treatment plans in less time, with greater flexibility to work interactively and in real time to efficiently develop the best IMRT treatment plans for even the most complex cases.

The Accuray Precision Treatment Planning System can be further enhanced with optional advanced capabilities below:

PreciseART Adaptive Radiation Therapy Option. The PreciseART Radiation Therapy Option extends adaptive radiotherapy possibilities, delivering an entirely new level of system integration and workflow automation for Radixact and other TomoTherapy Systems compatible with iDMS. The PreciseART Option enables clinicians to monitor patient treatment and efficiently adapt plans, helping clinics of all sizes deliver more precise treatments to more patients. It offers automated processing of daily imaging to enable clinicians to monitor all patients and set protocol-specific action levels to flag cases for review and possible plan adaptation. Its streamlined re-planning capabilities leverage full integration of treatment delivery, planning and database systems to allow clinicians to efficiently generate new treatment plans based on previous plan data. It also maintains the integrity of original treatment plans to ensure tumor coverage, preserve Organ-At-Risk (OAR) doses and reduce toxicity. We believe our PreciseART software is the only practically usable adaptive therapy solution available to the mainstream radiation therapy market.

PreciseRTX Retreatment Option. The PreciseRTX Retreatment Option makes retreatment planning more efficient and effective. The option helps to accelerate and enhance the process of creating new treatment plans for patients who have received previous irradiation. The workflow includes importation of patient dose data, from either Accuray or non Accuray planning systems, automatic deformation of original plan contours onto a new treatment

planning CT, automatic deformation of previously delivered dose onto a new planning CT, generation of the re treatment plan based on the information from existing plan and summation of the original and new treatment plans to review the total dose.

Accuray iDMS Data Management System. Accuray iDMS creates a centralized platform for storing and managing all patient and treatment plan data. Designed to integrate with a wide range of technologies and systems, iDMS enables users and applications to securely and seamlessly access the data they need to drive efficient, informed, effective treatment. Information for patients to be treated or previously treated on any iDMS compatible Accuray platform will be maintained as a single treatment record, providing the flexibility to treat patients on any available Accuray platform compatible with iDMS. It can manage users and privileges to control patient data access. It supports the Storage Vault option, which can safely maintain years of encrypted patient data. It also offers customizable report generation of patient, plan and treatment system with Report Administration Application. In addition, the Accuray iDMS enables connectivity between Accuray platforms with other systems in radiation oncology departments, encompassing the entire radiotherapy workflow. iDMS offers several key capabilities:

OIS Connect Option. The OIS Connect software option is a DICOM standard based solution that provides the ability to interface all iDMS enabled Accuray platform to a compatible Oncology Information System (OIS). This integration with electronic medical record generates a comprehensive export of the radiotherapy treatment history delivered using Accuray platforms.

Tomo Quality Assurance (TQA) package. The TQA application offers trending and reporting of many system and dosimetric parameters that allow physicians to monitor the performance of their TomoTherapy platforms.

Delivery Analysis. Delivery Analysis is a software option for the TomoTherapy platform that enables easy pre treatment patient QA and also offers an innovative capability to monitor doses throughout the patient treatment using detector signals to ensure that the patient is receiving the expected dose from treatment to treatment. The product option provides both high level analytics for summary display as well as detailed analysis capability.

Sales and Marketing

In the United States, we primarily market to customers directly through our sales organization, and we also market to customers through sales agents and Integrated Delivery Networks (IDNs). Outside the United States, we market to customers directly and through distributors. We have sales and service offices in Europe, Japan, China, and other countries in Asia, Latin America, and throughout the world.

In direct sales markets, we employ a combination of territory sales managers, product specialists, training specialists and marketing managers. Territory sales managers and product specialists are responsible for selling the systems to hospitals and stand-alone treatment facilities. Our marketing managers help market our current products and work with our engineering group to identify and develop upgrades and enhancements for our suite of products. Our training specialists train radiation oncologists, surgeons, physicists, dosimetrists and radiation therapists.

We market our products to radiation oncologists, neurosurgeons, general surgeons, oncology specialists and other referring physicians in hospitals and stand-alone treatment facilities. We intend to continue to increase our focus on marketing and education efforts to surgical specialists and oncologists responsible for treating tumors throughout the body, and are also working closely with hospital administrators to demonstrate the economic benefits of our offering. Our marketing activities also include efforts to inform and educate cancer patients about the benefits of the CyberKnife and TomoTherapy platforms.

Under our standard distribution agreement, we generally appoint a distributor for a specific country. We typically also retain the right to distribute the CyberKnife and TomoTherapy platforms in such territories, though we remain bound by certain agreements entered into by TomoTherapy prior to our acquisition that did not retain such rights in certain jurisdictions. In most territories, our distributors generally provide the full range of service and sales capabilities, although we may provide installation and service support for certain distributors.

In China, our joint venture in China (the “JV”) has begun selling our products, much like a distributor. In the long term, we anticipate that the JV will manufacture and sell a locally branded “Made in China” radiotherapy device in the Class B license category, which would replace our current offering in that category. We believe this strategy will allow us to best maximize both near and longer-term opportunities in China.

Manufacturing

We purchase major components for each of our products from outside suppliers, including the robotic manipulator, treatment couches, gantry, magnetrons and computers. We closely monitor supplier quality, delivery performance and conformance to product specifications, and we also expect suppliers to contribute to our efforts to improve our manufacturing cost and quality.

Some of the components are obtained from single-source suppliers. These components include the couch, magnetron and solid state modulator for the TomoTherapy platform and the robot, couch, and magnetron for the CyberKnife platform. In most cases, if a supplier was unable to deliver these components, we believe we would be able to find other sources for these components subject to any regulatory qualifications, if required. In the event of a disruption in any of these suppliers' ability to deliver a component, we would need to secure a replacement supplier. Additionally, any disruption or interruption of the supply of key subsystems could result in increased costs and delays in deliveries of our treatment systems, which could adversely affect our reputation and results of operations. To help mitigate these risks, we negotiate long-term supply contracts or submit long-term orders and forecasts to our single-source suppliers with the goal that our demand can be satisfied and any capacity problem can be mitigated.

Currently, we manufacture our CyberKnife and TomoTherapy platforms in Madison, Wisconsin. We manufacture the linear accelerator for our CyberKnife and TomoTherapy platforms at our Chengdu, China facility. Our facilities employ state-of-the-art manufacturing techniques and equipment. The components manufactured at our Chengdu facility are produced under the International Standard Organization (ISO), 13485:2016 certified quality management systems. The completed medical devices are designed, manufactured, installed, serviced and distributed at our Sunnyvale, Madison and Morges facilities under quality management systems which are compliant to the internationally recognized quality system standard for medical devices ISO, 13485:2016, and the Quality System regulations enforced by the FDA. We believe our manufacturing facilities will be adequate for our expected growth and foreseeable future demands for at least the next three years.

The manufacturing processes at our facilities include fabrication, subassembly, assembly, system integration and final testing. Our manufacturing personnel consist of fabricators, assemblers and technicians supported by production engineers as well as planning and supply chain managers. Our quality assurance program includes various quality control measures from inspection of raw material, purchased parts and assemblies through on-line inspection. We have also incorporated lean manufacturing techniques to improve manufacturing flow and efficiency. Lean manufacturing techniques include reducing wasteful and extraneous activities, balancing assembly and test flow, as well as better utilizing production assets and resources.

Intellectual Property

The proprietary nature of, and protection for, our products, product components, processes and know-how are important to our business. We seek patent protection in the United States and internationally for our systems and other technology where available and when appropriate. We may also in-license the technology, inventions and improvements that we consider important to the development of our business. In addition, we also rely upon trade secrets, know-how, trademarks, copyright protection, as well as confidentiality agreements with employees, consultants and other third parties, to protect our proprietary rights and to develop and maintain our competitive position.

As of June 30, 2021, we held exclusive field of use licenses or ownership of approximately 488 U.S. and foreign patents, and approximately 154 U.S. and foreign patent applications. These patents and applications cover various components and techniques incorporated into the CyberKnife and TomoTherapy platforms, or which may be incorporated into new technologies under current development, all of which we believe will allow us to maintain a competitive advantage in the field of radiation therapy systems. We cannot be certain that any patents will be issued from any of our pending patent applications, nor can we be certain that any of our existing patents or any patents that may be granted to us in the future will provide us with protection.

We periodically monitor the activities of our competitors and other third parties with respect to their use of intellectual property.

Research and Development

Continued innovation is critical to our future success. Our current product development activities include projects expanding clinical applications, driving product differentiation, and continually improving the usability, interoperability, reliability, and performance of our products. We continue to seek to develop innovative technologies so that we can improve our products and increase our sales. Some of our product improvements have been discussed above under the heading “Our Products.”

Our research activities strive to enable new product development opportunities by developing new technologies and advancing areas of existing core technology such as next generation linear accelerators, adaptive therapy, patient imaging, motion management, or treatment planning capabilities.

The modular design of our systems supports rapid development for new clinical capabilities and performance enhancements by generally allowing each subsystem to evolve within the overall platform design. Access to regular product upgrades protects customer investment in the system, facilitates the rapid adoption of new features and capabilities among existing installed base customers, and drives increasing value in our multiyear service plans. These upgrades will generally consist of software and hardware enhancements designed to increase the ease of use of our systems, improve the speed and accuracy of patient treatment and meet other customer needs.

A key component of our research and development program is our collaboration with research programs at selected hospitals, cancer treatment centers, academic institutions and research institutions worldwide. Our agreements with these third-party collaborators generally require us to make milestone-based payments during the course of a particular project and often also require that we make up-front payments to fund initial activities. Generally, we obtain non-exclusive worldwide rights to commercialize results from the collaboration with an option to negotiate an exclusive license. For inventions resulting from the collaboration that we own or exclusively license, we generally grant a royalty-free license for the purpose of continuing the institution’s research and development, and from time to time, we also grant broader licenses. Our research collaboration programs include work on clinical protocols and hardware and software developments. We also work with suppliers to develop new components in order to increase the reliability and performance of our products and seek opportunities to acquire or invest in the research of other parties where we believe it is likely to benefit our existing or future products.

We have entered into collaboration agreements with a variety of industrial partners within the fields of radiation oncology and medical imaging to provide us with opportunities to accelerate our innovation capability and bring complimentary products and technologies to market. We continue to seek out new partnerships to complement our internal developments and implement our product strategies.

Competition

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 regulatory 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, immunotherapy, and other drugs remain alternatives to the CyberKnife and TomoTherapy platforms.

New product sales in this competitive market are primarily dominated by two companies: Elekta AB (Elekta) and Varian Medical Systems, Inc. (Varian), which was recently acquired by Siemens Healthineers. Some manufacturers of standard linac systems, including Varian and Elekta, have products that can be used in combination with body and/or head frame systems and image-guidance systems to perform both radiosurgical and radiotherapy procedures. Our other competitors include ViewRay Inc. (ViewRay), RefleXion Medical, Zap Medical, and other companies in the radiosurgical and radiation therapy markets.

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, immunotherapy, gene therapy, and other approaches. 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 platforms and their technologies obsolete. Many of our competitors have or may have greater corporate, financial, operational, sales and marketing resources, and more experience in research and development than we have. We cannot assume 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 or less useful. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our competitive position also depends, among other things, on:

- Widespread awareness, acceptance and adoption of our products by the radiation oncology and cancer therapy markets;
- Innovations that improve the effectiveness and productivity of our systems' treatment processes and enable them to address emerging customer needs;
- Availability of reimbursement coverage from third-party payors (including insurance companies, governments, and/or others) for procedures performed using our platforms;
- Inclusion of radiotherapy in countries' cancer treatment policies as an effective treatment modality;
- Published, peer-reviewed data supporting the efficacy and safety of our platforms;
- Limiting the time required from proof of feasibility to routine production;
- Limiting the time period and cost of 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 and safeguard proprietary products and processes;
- Our ability to successfully expand into new and developing markets;
- Securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts; and
- Obtaining and maintaining any necessary United States or foreign regulatory approvals or clearances.

Our customers' equipment purchase considerations typically include reliability, treatment quality, service capabilities, patient throughput, price, payment terms and equipment supplier viability. We believe we compete favorably with our competitors on price and value based upon the technology offered by our platforms. We strive to provide a technologically superior product that covers substantially all aspects of radiation therapy to deliver precise treatments with high-quality clinical outcomes that meet or exceed customer expectations.

In addition to competition from technologies performing similar functions as our platforms, competition also exists for the limited capital expenditure budgets of our customers. For example, our platforms may compete with other equipment required by a radiation therapy department for financing under the same capital expenditure budget, which is typically limited. A purchaser, such as a hospital or cancer treatment center, may be required to select between the two items of capital equipment. Our ability to compete may also be adversely affected when purchase decisions are based solely upon price, since our products are premium-priced systems due to their higher level of functionality and performance.

U.S. Reimbursement

In the United States, healthcare providers that purchase capital equipment such as the CyberKnife and TomoTherapy platforms generally rely on government and private third-party payors for reimbursement for the healthcare treatment and services they provide. Examples of these types of payors include Medicare, Medicaid, private health insurance plans, and health maintenance organizations, which reimburse all or a portion of the cost of treatment, as well as related healthcare services. Reimbursement involves three components: coverage, coding and payment.

Coverage

There are currently no National Coverage Determinations in place under Medicare for CyberKnife or TomoTherapy treatments. Medicare coverage criteria for treatments performed on a CyberKnife and TomoTherapy platform is outlined in Local Coverage Determinations or, in the absence of a formal policy, treatment is covered as long as it is considered reasonable and necessary. The most common indications covered by Medicare in Local Coverage Determinations for radiotherapy are primary and metastatic tumors in the brain, spine, lung, liver, kidney, pancreas, adrenal gland, head and neck, breast, prostate, abdominal and retroperitoneal regions, as well as other cancers that have failed previous treatment. Commercial payor policies vary with respect to coverage for radiotherapy including many of the indications covered by Medicare, though coverage criteria may differ.

Coding

The codes that are used to report radiosurgery treatment delivery in 2021 for the hospital outpatient department are Current Procedural Terminology (CPT) codes 77372 and 77373 for single fraction intracranial radiosurgery and single fraction extracranial/multi-session radiosurgery/stereotactic body radiation therapy. For freestanding centers, robotic radiosurgery is billed with robotic radiosurgery Healthcare Common Procedural Codes (HCPCs) G0339 and G0340. The non-robotic SRS/SBRT codes 77372 and 77373 are also payable codes in the freestanding site of service for non-robotic SRS/SBRT.

In 2021, in the hospital outpatient department, IMRT delivery is billed under CPT code 77385 for simple IMRT and 77386 for complex IMRT. For 3D CRT three codes are used to report simple, intermediate, and complex treatments. 3D-CRT treatments delivered using the TomoTherapy and Radixact Systems are considered complex treatments and reported under the complex 3D-CRT code 77412. In December 2015, the Patient Access and Medicare Protection Act (PAMPA) stopped the IMRT and 3D CRT delivery codes from being implemented and prevented reimbursement reductions in the freestanding center setting through calendar year 2019. Although the payment freeze was set to expire on December 31, 2019, the Centers for Medicare and Medicaid Services (CMS) has continued to recognize these temporary HCPCS G codes in this setting. We expect all valid delivery codes will be recognized by commercial payers. Other codes are used to report treatment planning, dosimetry, treatment management, and other procedures routinely performed for treating radiosurgery or radiotherapy patients.

Payment

In the United States, the majority of procedures using the CyberKnife, TomoTherapy, and Radixact Systems are performed in the hospital outpatient department. Payment rates under the Medicare fee-for-service methodology are established based on cost data submitted by hospitals. CMS pays separately for ancillary procedures in addition to the delivery of IMRT, 3D CRT, and SRS/SBRT as well as a Comprehensive APC that bundles delivery and some ancillary services for single session cranial radiosurgery.

Payment for treatment with CyberKnife and TomoTherapy platforms are also available in the freestanding center setting. In 2019, the primary treatment delivery codes for robotic radiosurgery are priced by the regional Medicare Administrative Contractors. In 2021, it is expected the robotic SRS/SBRT delivery codes will remain contractor priced for providers paid under the traditional fee-for-service methodology. Payment rates for IMRT and 3DRT procedures are set by CMS with adjustments to account for geographic market variations. No major cuts by CMS have occurred to IMRT and 3DCRT in the past three years and payment is expected to remain stable through 2021.

In July 2019, CMS released a proposed rule titled *Medicare Program; Specialty Care Models to Improve Quality of Care and Reduce Expenditures*, which includes a new, alternative payment model for radiation oncology services.

If finalized as proposed, this rule would significantly alter CMS' payment methodology for radiation oncology services. Specifically, payment would be determined by the patient's diagnosis and include all radiation oncology services provided within a 90-day period. Providers may be mandatorily required to participate in this model based upon the location where the radiation treatment is provided to the Medicare beneficiary. CMS projects that 40% of the radiation oncology providers will be included in the model and 60% will continue to receive reimbursement based on fee-for-service methodology. If implemented as proposed, CMS anticipates that this model will result in 3-5% savings to the Medicare program.

The federal government reviews and adjust rates annually, and from time to time consider various Medicare and other healthcare reform proposals that could significantly affect both private and public reimbursement for healthcare services, including radiotherapy and radiosurgery, in hospitals and free-standing clinics. In the past, we have seen our customers' decision-making process complicated by the uncertainties surrounding reimbursement rates for radiotherapy and radiosurgery in the United States. State government reimbursement for services is determined pursuant to each state's Medicaid plan, which is established by state law and regulations, subject to requirements of federal law and regulations.

Foreign Reimbursement

Internationally, reimbursement and healthcare payment systems vary from country to country and include single-payor, government-managed systems as well as systems in which private payors and government-managed systems exist side-by-side. In general, the process of obtaining coverage approvals has been slower outside of the United States. Our ability to achieve adoption of our treatment systems, and significant sales volume in international markets, will depend in part on the availability of reimbursement for procedures performed using our products.

Regulatory Matters

Domestic Regulation

Our products and software are medical devices subject to regulation by the FDA, as well as other regulatory bodies. FDA regulations govern the following activities that we perform and will continue to perform to ensure medical products distributed domestically or exported internationally are safe and effective for their intended uses:

- Product design and development;
- Document and purchasing controls;
- Production and process controls;
- Labeling and packaging controls;
- Product storage;
- Recordkeeping;
- Servicing;
- Corrective and preventive action and complaint handling;
- Pre-market clearance or approval;
- Advertising and promotion; and
- Product sales and distribution.

FDA pre-market clearance and approval requirements. Unless an exemption applies, each medical device we wish to commercially distribute in the United States will require either 510(k) clearance or pre-market approval from the FDA. The FDA classifies medical devices into one of three classes. Devices deemed to pose lower risks are placed in either class I or II, which requires the manufacturer to submit to the FDA a pre-market notification requesting permission to commercially distribute the device, known as 510(k) clearance. Some low risk devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) devices, are placed in class III, requiring pre-market approval. All of our current products are class II devices requiring 510(k) clearances.

510(k) clearance pathway. When a 510(k) clearance is required, we must submit a pre-market notification demonstrating that our proposed device is substantially equivalent to a previously cleared and legally marketed 510(k) device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of pre-market approval applications (PMA). By statute, the FDA has targets to clear or deny a 510(k) pre-market notification after 90 days of review from submission of the application. Clearance generally takes longer as the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence.

In January 2002, we received 510(k) clearance for the TomoTherapy Hi Art System intended to be used as an integrated system for the planning and delivery of IMRT for the treatment of cancer. In August 2008, we received 510(k) clearance for our TomoDirect System. In June 2016, we received 510(k) clearance for the Radixact Treatment Delivery Platform. We also received 510(k) clearance for our new treatment planning and data management systems, Accuray Precision Treatment Planning System and iDMS Data Management System. In November 2018, we received 510(k) clearance for Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology for the Radixact System.

In July 1999, we received 510(k) clearance for the CyberKnife System for use in the head and neck regions of the body. In August 2001, we received 510(k) clearance for the CyberKnife System to provide treatment planning and image guided stereotactic radiosurgery and precision radiotherapy for lesions, tumors and conditions anywhere in the body where radiation treatment is indicated. In April 2002, we received 510(k) clearance for the Synchrony Motion Tracking System as an option to the CyberKnife System, intended to enable dynamic image guided stereotactic radiosurgery and precision radiotherapy of lesions, tumors and conditions that move under influence of respiration. In October 2012, we received 510(k) clearance for the InCise MLC with clearance from the FDA on July 1, 2015.

Pre-market approval (PMA) pathway. A PMA must be submitted to the FDA if the device is not eligible for the 510(k) clearance process. A PMA must be supported by extensive data including, but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate reasonable evidence of the device's safety and efficacy to the FDA's satisfaction. Currently, no device we have developed and commercialized has required pre-market approval.

Product modifications. After a device receives 510(k) clearance or a PMA approval, it may be changed or modified. Any modification that could significantly affect its safety or effectiveness, or that would constitute a significant change in its intended use, will require a new clearance or approval. Regulations provide that the manufacturer initially determines when a specific modification requires notification to FDA. The FDA has issued draft guidance that, if finalized and implemented, will result in manufacturers needing to seek a significant number of new clearances for changes made to legally marketed devices. The FDA reviews the manufacturer's decision to file a 510(k) or PMA for modifications during facility audits.

We have modified aspects of our CyberKnife and TomoTherapy platforms since receiving regulatory clearance, and we have applied for and obtained additional 510(k) clearances for these modifications when we determined such clearances were required. The FDA may review our 510(k) filing decision, and can disagree with our initial determination. FDA may take regulatory action from requiring new filings to injunction if it disagrees with our determinations not to seek a new 510(k) clearance or PMA approval for modifications. The FDA reviewed and cleared the most recent versions of the CyberKnife System and TomoTherapy platforms, including the Radixact System, in this fiscal year.

Pervasive and continuing regulation. After a device is placed on the market, numerous regulatory requirements apply. These include:

- Quality System Regulation (QSR), which require manufacturers, including third-party manufacturers, to follow stringent design, testing, documentation and other quality assurance procedures during product design and throughout the manufacturing process;
- Labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label uses; and
- Medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur.

The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of the California Department of Health Services to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of some of our subcontractors. Our Madison facility, where we manufacture the finished TomoTherapy and CyberKnife Systems, was most recently inspected by the FDA in August 2017. The August 2017 inspection resulted in no observations. We believe we are in substantial compliance with the QSR. Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- Fines, injunctions, consent decrees and civil penalties;
- Recall or seizure of our products;
- Operating restrictions, partial suspension or total shutdown of production;
- Refusing our requests for 510(k) clearance or pre-market approval of new products or new intended uses;
- Withdrawing 510(k) clearance or pre-market approvals that are already granted; and
- Criminal prosecution.

The FDA also has the authority to require us to repair, replace or refund the cost of any medical device that we have manufactured or distributed. If any of these events were to occur, they could have a material adverse effect on our business.

Radiological health. Because our CyberKnife and TomoTherapy platforms contain both laser and X-ray components, and because we assemble these components during manufacturing and service activities, we are also regulated under the Electronic Product Radiation Control Provisions of the United States Federal Food, Drug, and Cosmetic Act. This law requires laser and X-ray products to comply with regulations and applicable performance standards, and manufacturers of these products to certify in product labeling and reports to the FDA that their products comply with all such standards. The law also requires manufacturers to file new product reports, and to file annual reports and maintain manufacturing, testing and sales records, and report product defects. Various warning labels must be affixed. Assemblers of diagnostic X-ray systems are also required to certify in reports to the FDA, equipment purchasers, and where applicable, to state agencies responsible for radiation protection, that diagnostic and/or therapeutic X-ray systems they assemble meet applicable requirements. Failure to comply with these requirements could result in enforcement action by the FDA, which can include injunctions, civil penalties, and the issuance of warning letters.

Fraud and abuse laws. We are subject to various federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback laws and physician self-referral laws. Violations of these laws are punishable by significant criminal and civil sanctions, including, in some instances, exclusion from participation in federal and state healthcare programs, including Medicare and Medicaid. Because of the far-reaching nature of these laws, there can be no assurance that we would not be required to alter one or more of our practices to be in compliance with these laws. Evolving interpretations of current laws or the adoption of new federal or state laws or regulations could adversely affect many of the arrangements we have with customers and physicians. In addition, there can be no assurance that the occurrence of one or more violations of these laws or regulations would not result in a material adverse effect on our financial condition and results of operations.

Anti-kickback laws. Our operations are subject to broad and changing federal and state anti-kickback laws. The Office of the Inspector General of the Department of Health and Human Services (OIG) is primarily responsible for enforcing the federal Anti-Kickback Statute and generally for identifying fraud and abuse activities affecting government programs. The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration directly or indirectly to induce either the referral of an individual, or the furnishing, recommending, or arranging of a good or service, for which payment may be made under a federal healthcare program such as Medicare and Medicaid. “Remuneration” has been broadly interpreted to include anything of value, including such items as gifts, discounts, the furnishing of supplies or equipment, credit arrangements, waiver of payments, and providing anything of value at less than fair market value.

Penalties for violating the federal Anti-Kickback Statute include criminal fines of up to $25,000 and/or imprisonment for up to five years for each violation, civil monetary penalties, which could result in treble damages plus fines of up to $50,000 for each violation, and possible exclusion from participation in federal healthcare programs such as Medicare and Medicaid. Many states have adopted prohibitions similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare services reimbursed by any source, not only by the Medicare and Medicaid programs, and do not include comparable exceptions.

The OIG has issued safe harbor regulations which set forth certain activities and business relationships that are deemed safe from prosecution under the federal Anti-Kickback Statute. There are safe harbors for various types of arrangements, including, without limitation, certain investment interests, leases and personal services and management contracts. The failure of a particular activity to comply in all regards with the safe harbor regulations does not mean that the activity violates the federal Anti-Kickback Statute or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy each applicable safe harbor may result in increased scrutiny by government enforcement authorities such as the OIG.

The OIG has identified the following arrangements with purchasers and their agents 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 and other services specifically tied to support of the purchased product, offered in tandem with another service or program (such as a 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-marketing 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 are expressly or impliedly related to a sale or sales volume, such as “rebates” and “upfront payments,” 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 a variety of financial relationships with physicians who are in a position to generate business for us. For example, physicians who own our stock also provide medical advisory and other consulting or collaboration services. Similarly, we have a variety of different types of arrangements with our customers. In the case of our former placement program, certain services and upgrades were provided without additional charge based on procedure volume. In the past, we have also provided loans to our customers. We also provide research or educational grants to customers to support customer studies related to, among other things, our CyberKnife and TomoTherapy platforms.

If our past or present operations are found to be in violation of the federal Anti-Kickback Statute or similar government regulations to which we or our customers are subject, we or our officers 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 violation may lead to curtailment or restructuring of our operations. Any penalties, damages, fines, or curtailment or restructuring of our operations 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 some 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 an enforcement action were to occur, our reputation and our business and financial condition could 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.

Transparency laws. The Physician Payment Sunshine Act (the Sunshine Act), which was enacted by Congress as part of the Patient Protection and Affordable Care Act on December 14, 2011, requires each applicable manufacturer, which includes medical device companies such as Accuray, to track and report to the federal government on an annual basis all payments and other transfers of value from such applicable manufacturer to U.S. licensed physicians and teaching hospitals as well as physician ownership of such applicable manufacturer's equity, in each case subject to certain statutory exceptions. Such data will be made available by the government on a publicly searchable website. Failure to comply with the data collection and reporting obligations imposed by the Sunshine Act can result in civil monetary penalties ranging from $1,000 to $10,000 for each payment or other transfer of value that is not reported (up to a maximum of $150,000 per reporting period) and from $10,000 to $100,000 for each knowing failure to report (up to a maximum of $1 million per reporting period). In addition, we are subject to similar state and foreign laws related to the tracking and reporting of payments and other transfers of value to healthcare professionals. These laws require or will require that we implement the necessary and costly infrastructure to track and report such payments and transfers of value. Failure to comply with these new tracking and reporting laws could subject us to significant civil monetary penalties.

Physician self-referral laws. We are also subject to federal and state physician self-referral laws. The federal Ethics in Patient Referrals Act of 1989, commonly known as the Stark Law, 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 any good or service furnished pursuant to an unlawful referral.

In addition, in July 2008, CMS issued a final rule implementing significant amendments to the regulations under the Stark Law. The final rule, which was effective October 1, 2009, imposes additional limitations on the ability of physicians to refer patients to medical facilities in which the physician or an immediate family member has an ownership interest for treatment. Among other things, the rule provides 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. Prior to enactment of the final rule, physician owned entities had increasingly become involved in the acquisition of medical technologies, including the CyberKnife platform. In many cases, these entities entered into arrangements with hospitals that billed Medicare for the furnishing of medical services, and the physician owners were among the physicians who referred patients to the entity for services. The rule limits these arrangements and could require the restructuring of existing arrangements between physicians owned entities and hospitals and could discourage physicians from participating in the acquisition and ownership of medical technologies. The final rule also prohibits percentage-based compensation in equipment leases. As a result of the finalization of these regulations, some existing CyberKnife platform operators have modified or restructured their corporate or organizational structures. In addition, certain customers that planned to open CyberKnife centers in the United States involving physician

ownership have restructured their legal ownership structure. Certain entities were not able to establish viable models for CyberKnife platform operation and therefore canceled their CyberKnife platform purchase agreements. Accordingly, these regulations have resulted in cancellations of CyberKnife platform purchase agreements and could also reduce the attractiveness of medical technology acquisitions, including CyberKnife platform purchases, by physician owned joint ventures or similar entities. As a result, these regulations have had, and could continue to have, an adverse impact on our product sales and therefore on our business and results of operations.

A person who engages in a scheme to circumvent the Stark Law's referral prohibition may be fined up to $100,000 for each such arrangement or scheme. In addition, any person who presents or causes to be presented a claim to the Medicare or Medicaid programs in violations of the Stark Law is subject to civil monetary penalties of up to $15,000 per bill submission, an assessment of up to three times the amount claimed, and possible exclusion from federal healthcare programs such as Medicare and Medicaid. Various states have corollary laws to the Stark Law, including laws that require physicians to disclose any financial interest they may have with a healthcare provider to their patients when referring patients to that provider. Both the scope and exceptions for such laws vary from state to state.

Federal False Claims Act. The federal False Claims Act 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. When an entity is determined to have violated the False Claims Act, it may be required to pay three times the actual damages sustained by the government, plus mandatory civil penalties of between $11,181 and $22,363 for each separate false claim. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, sometimes known as "relators" or, more commonly, as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. In addition, certain states have enacted laws modeled after the federal False Claims Act. Qui tam actions have increased significantly in recent years, causing greater numbers of healthcare companies to have to defend a false claim action, pay fines or be excluded from Medicare, Medicaid or other federal or state healthcare programs as a result of an investigation arising out of such action. We have retained the services of a reimbursement consultant, for which we pay certain consulting fees, to provide us and facilities that have purchased a CyberKnife or TomoTherapy platform, with general reimbursement advice. While we believe this will assist our customers in filing proper claims for reimbursement, and even though such consultants do not submit claims on behalf of our customers, the fact that we provide these consultant services could expose us to additional scrutiny and possible liability in the event one of our customers is investigated and determined to be in violation of any of these laws.

HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), created two new federal crimes: healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from government sponsored programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. A violation of this statute is a felony and may result in fines or imprisonment.

As a participant in the healthcare industry, we are also subject to extensive federal and state laws and regulations protecting the privacy and integrity of patient medical information, including privacy and security standards required under HIPAA. The HIPAA privacy standard was 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. 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 security measures to protect individually identifiable health information we receive from covered entities. Furthermore, business associates are directly subject to regulations under HIPAA including the new enforcement scheme, criminal and civil penalties for certain violations, and inspection requirements.

Foreign Corrupt Practices Act. The United States and foreign government regulators have increased regulation, enforcement, inspections and governmental investigations of the medical device industry, including increased United States government oversight and enforcement of the Foreign Corrupt Practices Act. Whenever the United States or another foreign governmental authority concludes that we are not in compliance with applicable laws or regulations, such governmental authority can impose fines, delay or suspend regulatory clearances, institute proceedings to detain or seize our products, issue a recall, impose operating restrictions, enjoin future violations and assess civil penalties against us or our officers or employees, and can recommend criminal prosecution to the Department of Justice. Moreover, governmental authorities can ban or request the recall, repair, replacement or refund of the cost of any device or product we manufacture or distribute. In addition, our third party agents in foreign countries can also subject us to prosecution under Foreign Corrupt Practices Act. We are also subject to the UK Bribery Act, which could also lead to the imposition of civil and criminal fines and other similar anti-bribery and anti-corruption laws. Any of the foregoing actions could result in decreased sales as a result of negative publicity and product liability claims, and could have a material adverse effect on our financial condition, results of operations and prospects.

International Regulation

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain clearance or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval, and the requirements are often different.

The primary regulatory environment in Europe is that of the European Union and the three additional member states of the European Economic Area (EEA), which have adopted similar laws and regulations with respect to medical devices. The European Union has adopted numerous directives and the European Committee for Standardization has promulgated standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Devices that comply with the requirements of the relevant directive will be entitled to bear CE conformity marking, indicating that the device conforms to the essential requirements of the applicable directives and, accordingly, may be commercially distributed throughout the member states of the EEA.

The method of assessing conformity to applicable standards and directives depends on the type and class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a notified body, an independent and neutral institution appointed by a European Union member state to conduct the conformity assessment. This relevant assessment may consist of an audit of the manufacturer’s quality system (currently ISO 13485), provisions of the Medical Devices Directive, and specific testing of the manufacturer’s device. Our facilities were first awarded the ISO 13485 certification in September 2002 and has been subsequently maintained through periodic assessments, and we are currently authorized to affix the CE mark to our products, allowing us to sell our products throughout the European Economic Area. The Medical Device Regulation (MDR) came into effect in the European Union in May 2021. We are required to obtain certification against the MDR to CE mark new products or to make significant changes to existing products. There are fewer notified bodies authorized under the MDR to qualify businesses and products. This may result in additional time for initial product reviews and to obtain authorization to apply the CE mark.

We are also currently subject to regulations in Japan. Under the Pharmaceutical Affairs Law in Japan, a pre-market approval necessary to sell, market and import a product (Shonin) must be obtained from the Ministry of Health, Labor and Welfare (MHLW), for our products. A Japanese distributor received the first government approval to market the CyberKnife System from MHLW in November 1996. We received and maintain Shonin approval from MHLW for CyberKnife Treatment Delivery Systems, M6 Series with InCise MLC, TomoTherapy Treatment Delivery Systems, Radixact Treatment Delivery Systems, and associated Precision and iDMS software products.

Additionally, our products are subject to regulations in China. The China Supervision and Regulation of Medical Devices (No. 680) requires licensing from the National Medical Products Administration (NMPA) to market, sell, and import our product type. The NMPA licenses require testing by the Beijing Institute for Medical Devices Testing (BIMT) specifically related to China variations of global safety and performance standards. We received and maintain NMPA licenses for various configurations of Radixact Treatment Delivery Systems, CyberKnife

Treatment Delivery Systems, TomoTherapy Treatment Delivery Systems, and associated Precision and iDMS software products.

We are subject to additional regulations in other foreign countries, including, but not limited to, Canada, Taiwan, Korea, and Russia in order to sell our products. We expect that either we or our distributors will receive any necessary approvals or clearance prior to marketing our products in those international markets.

State Certificate of Need Laws

In some states, a certificate of need or similar regulatory approval is required prior to the acquisition of high-cost capital items or the provision of new services. These laws generally require appropriate state agency determination of public need and approval prior to the acquisition of such capital items or addition of new services. Certificate of need regulations may preclude our customers from acquiring one of our systems, and from performing stereotactic radiosurgery procedures using one of our systems. Several of our prospective customers currently are involved in appeals of certificate of need determinations. If these appeals are not resolved in favor of these prospective customers, they may be precluded from purchasing and/or performing services using one of our systems. Certificate of need laws are the subject of continuing legislative activity, and a significant increase in the number of states regulating the acquisition and use of one of our systems through certificate of need or similar programs could adversely affect us.

Backlog

For a discussion of our fiscal 2021 backlog, please refer to the section entitled *"Backlog,"* in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations.

Employees and Human Capital Resources

Our employees are critical to the success of our business. As of June 30, 2021, we had 995 full-time employees, including 380 employees employed outside of the United States. We also engage part-time employees and independent contractors to supplement our workforce. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We have never experienced any employment related work stoppages and we believe our relationship with our employees is good.

Our human capital resources objectives include recruiting, retaining, training, and motivating our personnel. The principal purposes of our incentive compensation policies are to attract, retain, and reward personnel through the granting of equity-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives. We strive to foster a diverse and inclusive culture and environment which encourages active dialogue and robust engagement on the issues most salient to employee satisfaction and believe our employees are empowered to play a significant role in shaping the direction and success of the company.

Geographic Information

For financial reporting purposes, net sales and long-lived assets attributable to significant geographic areas are presented in Note 17, *Segment Disclosure*, to the consolidated financial statements, which are incorporated herein by reference.

Available Information

Our main corporate website address is *www.accuray.com*. We make available on this website, free of charge, copies of our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and our proxy statements, and any amendments to those reports, as soon as reasonably practicable after filing such material electronically or otherwise furnishing it to the Securities and Exchange Commission, the SEC. All SEC filings are also available at the SEC's website at *www.sec.gov.*

We also use our investor relations website as a channel of distribution for important company information. For example, webcasts of our earnings calls and certain events we participate in or host with members of the investment community are on our investor relations website. Additionally, we announce investor information, including news

and commentary about our business and financial performance, SEC filings, notices of investor events, and our press and earnings releases, on our investor relations website. Investors and others can receive notifications of new information posted on our investor relations website in real time by signing up for email alerts and RSS feeds. Further corporate governance information, including our corporate governance guidelines, board committee charters, and code of conduct, is also available on our investor relations website under the heading “Governance.” The contents of our websites are not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

Item 1A. RISK FACTORS

Risk Factors Summary

Our business is subject to numerous risks and uncertainties, including those highlighted in Part II, Item 1A titled “Risk Factors.” These risks include, but are not limited to, the following:

Risks related to our business and results of operations

- The effect of the COVID-19 pandemic could continue to have a material adverse effect on our business, financial condition, results of operations, or cash flows.
- If our products do not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.
- Our ability to achieve profitability depends in part on maintaining or increasing our gross margins on product sales and services.
- We have outstanding indebtedness and may incur other debt in the future, which may adversely affect our financial condition and future financial results.
- Our operating results, including our quarterly orders, revenues and margins fluctuate from quarter to quarter and may be unpredictable, which may result in a decline in our stock price.
- Our industry is subject to intense competition and rapid technological change. 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 obsolete or less useful and our operating results will suffer.
- International sales of our products account for a significant portion of our revenue, which exposes us to risks inherent in international operations.
- Enhanced international tariffs that affect our products or components within our products, other trade barriers or a global trade war could increase our costs and materially and adversely affect our business operations and financial condition.
- We face risks related to the current global economic environment, which could adversely affect our business, financial condition and results of operations.
- 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.
- If we are unable to develop new products or enhance existing products to meet our customers’ needs and compete favorably in the market, we may be unable to attract or retain customers.
- If we do not effectively manage our growth, our business may be significantly 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 reliance on single-source suppliers for critical components of our products could harm our ability to meet demand for our products in a timely and cost effective manner.
- We depend on key employees, the loss of whom would adversely affect our business.

- Disruption of critical information technology systems, infrastructure and data or cyberattacks could harm our business and financial condition.
- Any actual or perceived failure by us to comply with legal or regulatory requirements related to privacy, cyber security and data protection in one or multiple jurisdictions could result in proceedings, actions or penalties against us.
- 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.
- 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.
- It is difficult and costly to protect our intellectual property and our proprietary technologies and we may not be able to ensure their protection.
- Because the majority of our product revenue is derived from sales of the CyberKnife and TomoTherapy platforms, which have a long and variable sales and installation cycle, our revenues and cash flows may be volatile and difficult to predict.

Risks related to the regulation of our products and business

- Modifications, upgrades, new indications and future products related to our products may require new FDA 510(k) clearances or premarket approvals and similar licensing or approvals in international markets. Such modifications, or any defects in design, manufacture or labeling may require us to recall or cease marketing the affected systems or software until approvals or clearances are obtained.
- We are subject to federal, state and foreign laws and regulations applicable to our operations, the violation of which could result in substantial penalties and harm our business.
- 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.
- Healthcare reform legislation could adversely affect demand for our products, our revenue and our financial condition.
- Regulations related to “conflict minerals” may force us to incur additional expenses, may result in damage to our business reputation and may adversely impact our ability to conduct our business.

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 conditional conversion features of the Notes, if triggered, may adversely affect our financial condition and operating results.
- Provisions in the indenture for the Notes, the credit agreement for our New Credit Facility, 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.

General Risks

- Our operations are vulnerable to interruption or loss because of natural disasters, global or regional health pandemics or epidemics, terrorist acts and other events beyond our control, which would adversely affect our business.

Risk Factors

We operate in a rapidly changing environment that involves significant risks, a number of which are beyond our control. In addition to the other information contained in this Form 10-K, the following discussion highlights some of these risks and the possible impact of these factors on our business, financial condition and future results of operations. If any of the following risks actually occur, our business, financial condition or results of operations may be adversely impacted, causing the trading price of our common stock to decline. In addition, these risks and uncertainties may impact the "forward-looking" statements described elsewhere in this Form 10-K and in the documents incorporated herein by reference. They could affect our actual results of operations, causing them to differ materially from those expressed in "forward-looking" statements.

Risks Related to Our Business and Results of Operations

The effect of the COVID-19 pandemic, or the perception of its effects, as well as the responses of governments and private industry on our operations and the operations of our customers and suppliers, have and could continue to have a material adverse effect on our business, financial condition, results of operations, or cash flows.

In December 2019, a novel strain of coronavirus, SARS-CoV-2, which causes coronavirus disease 2019, or COVID-19, surfaced in Wuhan, China and was subsequently declared a pandemic, which has affected, and continues to affect, the worldwide economy, global operations and global supply chains. In addition, new variants of COVID-19 that are more contagious have also spread throughout the world. The pandemic continues to be prevalent and related government and private sector responsive actions have impacted and will likely continue to adversely affect our business operations. Although vaccines are now available, deployment of such vaccines around the world has been slow and the impact on any potential recovery is unclear. It is impossible to predict the full extent of the effects of the COVID-19 pandemic on our business, operations, financial condition or the economy.

Governments, public institutions, and other organizations are taking certain preventative or protective measures to combat the spread of the pandemic. While we are unable to predict the full impact of the pandemic, we are closely monitoring the spread of COVID-19 and are continually assessing its potential effects on our business. As a result of timing delays caused by the COVID-19 pandemic, we have and are continuing to experience disruptions in our sales and revenue cycle as well as declines in deliveries and installations of our products, which has adversely impacted the pace at which our backlog converts to revenue. These timing delays have been a result of various factors driven by the COVID-19 pandemic, including disruptions in the operations of our customers that have redirected customer resources to the COVID-19 response and away from purchases of capital equipment such as our products, disruptions and restrictions on our ability to travel to customer sites, disruptions in our supply chain, and manufacturing interruptions. We have also experienced delays in payment and planned installations as a result of the changes to and redirection of customer resources to the response to the COVID-19 pandemic and closures of customer facilities. A few customers have also requested to extend payment terms or temporarily suspend service and corresponding payment obligations and while we have only received a small number of requests thus far, as the pandemic and its effects continue, more customers may ask for the same, particularly, if the effects of the COVID-19 pandemic deepen or worsen. Additionally, to protect the health and well-being of our employees, suppliers, and customers, we have also made substantial modifications to employee travel and suspended non-essential work travel, implemented remote work arrangements as employees are advised to work from home, and cancelled or shifted most of our conferences and other marketing events to virtual through fiscal year 2021. In addition, other impacts of the COVID-19 pandemic have included and could include significant and unpredictable reductions in the demand for our products, a deepening of the changes to the operations and workflows of our customers that could result in increased customer defaults or delays in payment; additional delays, cancellations and redirection of planned capital expenditures and installations of our system by our customers to focus resources on COVID-19; disruptions in our supply chain or a reduction or interruption in any of our manufacturing processes resulting in our inability to meet demand for our products; or closures of our key facilities or the facilities of our customers or suppliers. Further, a lack of coordinated response on or compliance with risk mitigation and vaccination deployment with respect to the COVID-19 pandemic could result in significant increases to the duration and severity of the pandemic and could have a corresponding negative impact on our business. These impacts and others that have resulted as a result of the COVID-19 pandemic and the unprecedented measures to slow the spread of the virus globally have had and will continue to have a negative impact on our business, operations and financial condition.

In addition, in 2020, there was a global economic slowdown as a result of the COVID-19 pandemic, which adversely impacted our revenue, net income (loss) and cash flow and resulted in additional expenditures required to mitigate such impacts. These impacts could continue to affect our business as the COVID-19 pandemic progresses. The impact of the COVID-19 pandemic on the global financial markets may reduce our ability to access capital, which could negatively impact our short-term and long-term liquidity. The extent to which our operations and financial condition are affected by the COVID-19 pandemic, including our ability to execute our business strategies and initiatives in the expected time frame, will largely depend on future developments that cannot be accurately predicted at this time and are uncertain, including new information that may emerge concerning the severity and scope of the COVID-19 pandemic (including the severity of increases or spikes in the number of COVID-19 cases in areas in which we operate) or new or additional actions taken to contain COVID-19 or address its impact, and the timing of global recovery and economic normalization, among others. The situation is developing rapidly and additional impacts may arise that we are not aware of currently, however, the COVID-19 pandemic or the perception of its effects could have a material adverse effect on our business, financial condition, results of operations, or cash flows. In addition, the COVID-19 pandemic and the various responses to it, may also have the effect of heightening many of the other risks discussed in this "Risk Factors" section.

If the CyberKnife or TomoTherapy platforms 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 platforms as preferred methods of tumor treatment is crucial to our continued success. Physicians will not begin to use or increase the use of the CyberKnife or TomoTherapy platforms unless they determine, based on experience, clinical data and other factors, that the CyberKnife and TomoTherapy platforms are safe and effective alternatives to traditional treatment methods. Further, physicians may be slow to adopt new or updated versions of our CyberKnife and TomoTherapy platforms because of the perceived liability risks arising from the use of new products and the uncertainty of reimbursement from third-party payors, particularly in light of ongoing health care reform initiatives and the evolving U.S. health care environment. If we are not able to expand market acceptance of our products and maintain and increase our base of installed systems, or installed base, then sales of our products may not meet expectations. Any failure to expand and protect our existing installed base could adversely affect our operating results.

We often need to educate physicians about the use of stereotactic radiosurgery, image guided radiation therapy (IGRT) and adaptive radiation therapy, convince healthcare payors that the benefits of the CyberKnife and TomoTherapy platforms and their related treatment processes outweigh their costs, and help train qualified physicians in the skilled use of these systems. In addition, we also must educate prospective customers regarding the entire functionality of our radiation therapy systems and their relative benefits compared to alternative products and treatment methods. We must also increase awareness among potential patients, who are increasingly educated about treatment options and therefore impact adoption of new technologies by clinicians. We have expended and will continue to expend significant resources on marketing and educational efforts to create awareness of stereotactic radiosurgery and robotic intensity-modulated radiotherapy (IMRT) as well as adaptive radiation therapy and IGRT generally and to encourage the acceptance and adoption of our products for these technologies. We cannot be sure that our products will gain significant market acceptance among physicians, patients and healthcare payors, even if we spend significant time and expense on their education.

In addition to achieving market acceptance of our products and the need to educate physicians and others about the benefits of our products, the CyberKnife and TomoTherapy platforms are major capital purchases, and purchase decisions are greatly influenced by hospital administrators who are subject to increasing pressures to reduce costs. In addition, hospitals and other health professionals may reduce staffing and reduce or postpone meetings with potential suppliers in response to the spread of an infectious disease, such as COVID-19, effectively delaying the decision on potential purchases of new products such as ours. These and other factors, including the following, may affect the rate and level of market acceptance of the CyberKnife and TomoTherapy platforms:

- the CyberKnife and TomoTherapy platforms' 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 such products in a timely manner;

- increased scrutiny by state boards when evaluating certificates of need requested by purchasing institutions;
- perception by patients, physicians and other members of the healthcare community of the CyberKnife and TomoTherapy platforms' safety, efficacy, efficiency and benefits compared to competing technologies or treatments;
- willingness of physicians to adopt new techniques and the ability of physicians to acquire the skills necessary to operate the CyberKnife and TomoTherapy platforms;
- extent of third-party coverage and reimbursement rates, particularly from Medicare, for procedures using the CyberKnife and TomoTherapy platforms; and
- development of new products and technologies by our competitors or new treatment alternatives.

If the CyberKnife or TomoTherapy platforms 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.

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

As of June 30, 2021, we had an accumulated deficit of $488.0 million. We may incur net losses in the future, particularly as selling and marketing activities increase ahead of any expected revenue. Our ability to achieve and sustain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife and TomoTherapy platforms, control our costs, and effectively manage our growth. We cannot assure you that we will be able to achieve profitability and even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. In the event we fail to achieve profitability, our stock price could decline.

Our ability to achieve profitability also depends on our ability to maintain or increase our gross margins on product sales and services. A number of factors may adversely impact such gross margins, including:

- lower than expected manufacturing yields of high cost components leading to increased manufacturing costs;
- low production volume, which will result in high levels of overhead cost per unit of production;
- our ability to sell products and services, recognize revenue from our sales and the timing of revenue recognition and revenue deferrals;
- increased material or labor costs;
- increased inventory costs and liabilities for excess inventory resulting from inventory held in excess of forecasted demand;
- increased service or warranty costs or the failure to reduce service or warranty costs;
- increased price competition;
- variation in the margins across products installed in a particular period;
- changes to U.S. and foreign trade policies, including enactments of tariffs on goods imported into the U.S. and any retaliatory tariffs imposed by other countries on U.S. goods, including our products; and
- how well we execute on our strategic and operating plans.

If we are unable to maintain or increase our gross margins on product sales and service, our results of operations could be adversely impacted, we may not achieve profitability and our stock price could decline.

We have outstanding indebtedness in the form of Convertible Senior Notes and a credit facility and may incur other debt in the future, which may adversely affect our financial condition and future financial results.

In August 2017, we issued $85.0 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2022 (the "3.75% Convertible Notes due 2022"). In May 2021, we issued $100.0 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2026 (the "3.75% Convertible Notes due 2026" and collectively, with the 3.75% Convertible Notes due 2022, the "Notes"). As our debt matures, we anticipate having to expend significant resources to either repay or refinance the Notes. For example, in May 2021, in connection with the issuance of the 3.75% Convertible Notes due 2026, we (i) exchanged approximately $82.1 million aggregate principal amount of our 3.75% Convertible Notes due 2022 for approximately $97.1 million aggregate principal amount of 3.75% Convertible Notes due 2026 and (ii) sold approximately $2.9 million aggregate principal amount of 3.75% Convertible Notes due 2026 for cash. If we decide to refinance the Notes in the future, we may be required to do so on different or less favorable terms or we may be unable to refinance the Notes at all, both of which may adversely affect our financial condition.

In May 2021, we entered into a credit agreement that provided us with a five-year $80.0 million term loan (the "New Term Loan Facility") and $40.0 million revolving credit facility (the "New Revolving Credit Facility" and together with the "New Term Loan Facility", the "New Credit Facilities"). The proceeds from the New Credit Facilities, plus available cash on hand, were used to repay all outstanding borrowings under our prior credit facility.

As of June 30, 2021, we had total consolidated liabilities of approximately $411.3 million; including long-term liability components of the Notes of $75.1 million, the New Revolving Credit Facility of $20.0 million and the New Term Loan Facility of $78.7 million, of which $3.8 million is classified as short-term loan. Our existing and future levels of indebtedness could have important consequences to stockholders and note holders and may adversely affect our financial conditions and future financial results by, among other things:

- affecting our ability to satisfy our obligations under the Notes and New Credit Facilities;
- requiring a substantial portion of our cash flows from operations to be dedicated to interest and principal payments, which may not be available for operations, working capital, capital expenditures, expansion, acquisitions or general corporate or other purposes;
- impairing our ability to obtain additional financing in the future;
- limiting our flexibility in planning for, or reacting to, changes in our business and industry; and
- increasing our vulnerability to downturns in our business, our industry or the economy in general, including any such downturn related to the impact of the COVID-19 pandemic.

The credit agreement governing the New Credit Facilities also include certain restrictive covenants that limit, among other things, our ability and our subsidiaries' ability to (i) incur indebtedness, (ii) incur liens on their property, (iii) pay dividends or make other distributions, (iv) sell their assets, (v) make certain loans or investments, (vi) merge or consolidate, (vii) voluntarily repay or prepay certain indebtedness and (viii) enter into transactions with affiliates, in each case, subject to certain exceptions. In addition, such agreements require us to meet certain financial covenants, including a consolidated fixed charge coverage ratio and consolidated senior net leverage ratio, as defined in the credit agreement governing the New Credit Facilities. These restrictions could adversely affect our ability to finance our future operations or capital needs, withstand a future downturn in our business or the economy in general, engage in business activities, including future opportunities that may be in our interest, and plan for or react to market conditions or otherwise execute our business strategies. Our ability to comply with the covenants and other terms governing the New Credit Facilities will depend in part on our future operating performance. If we fail to comply with such covenants and terms, we may be in default and the maturity of the related debt could be accelerated and become immediately due and payable. In addition, because our assets are pledged as a security under the New Credit Facilities, if we are not able to cure any default or repay outstanding borrowings, our assets are subject to the risk of foreclosure by our lenders. From time to time, we may not be in compliance with such covenants or other terms governing the New Credit Facilities and we may be required to obtain waivers or

amendments to the credit agreement from our lenders in order to maintain compliance and there can be no certainty that any such waiver or amendment will be available, or what the cost of such waiver or amendment, if obtained, would be. If we are unable to obtain necessary waivers and the debt under such credit facility is accelerated, we would be required to obtain replacement financing at prevailing market rates, which may not be favorable to us. Additionally, a default on indebtedness could result in a default under the terms of the indenture governing the Notes. There is no guarantee that we would be able to satisfy our obligations if any of our indebtedness is accelerated.

Our operating results, including our quarterly orders, revenues and margins fluctuate from quarter to quarter and may be unpredictable, which may result in a decline in our stock price.

We have experienced and expect in the future to experience fluctuations in our operating results, including gross orders, revenues and margins, from period to period. Drivers of orders include the introduction and timing of new product or product enhancement announcements by us and our competitors, the timing of regulatory approvals, changes in price by us and our competitors as well as changes or anticipated changes in third-party reimbursement amounts or policies applicable to treatments using our products. The availability of economic stimulus packages or other government funding, or reductions thereof, may also affect timing of customer purchases. Our products have a high unit price and require significant capital expenditures by our customers. Accordingly, we experience long sales and implementation cycles, which is of greater concern during a volatile economic environment where we have had customers delay or cancel orders. The timing of when orders are placed, when installation, delivery or shipping, as applicable, is accomplished and when revenue is recognized affect our quarterly results. Further, because of the high unit price of the CyberKnife and TomoTherapy platforms and the relatively small number of units sold or installed each quarter, each sale or installation of a CyberKnife or TomoTherapy platform can represent a significant percentage of our net orders, backlog or revenue for a particular quarter and shifts in sales or installation from one quarter to another may have significant effects. For example, multi-system sales or sales involving negotiations with integrated delivery networks involve additional complexities to the transaction and require a longer timeline to finalize the sale, which make it more difficult to predict the quarter in which the sale will occur. In addition, we have experienced and are continuing to experience delays in orders and installations due to the impact of the COVID-19 pandemic at our customer sites. To protect the health and well-being of our employees, suppliers, and customers, we have also made substantial modifications to employee travel and suspended non-essential work travel. The COVID-19 pandemic has impacted and may continue to impact our business operations, including our employees, customers and partners, and there is substantial uncertainty in the nature and degree of its continued effects over time.

Once orders are received and booked into backlog, there is a risk that we may not recognize revenue in the near term or at all. The COVID-19 pandemic has adversely impacted the pace at which the backlog converts to revenue. This is primarily the result of delays in the timing of deliveries and installations in fiscal 2020 and 2021 caused by the COVID-19 pandemic, which resulted in decreased revenue for these periods. We expect that such delays in deliveries and installations will continue to some degree into fiscal 2022, which could have a negative impact on our revenue during such period. Factors that may affect whether these orders become revenue (or are cancelled or deemed aged-out and reflected as a reduction in net orders) and the timing of revenue include:

- economic or political instability, including volatility related to the COVID-19 pandemic;
- delays in the customer obtaining or inability of a customer to obtain funding or financing;
- delays in construction at the customer site and delays in installation;
- delays in the customer obtaining or inability of such customer to obtain local or foreign regulatory approvals such as certificates of need in certain states or Class A or Class B user licenses in China;
- the terms of the applicable sales and service contracts of the CyberKnife and TomoTherapy platforms; and
- the proportion of revenue attributable to orders placed by our distributors, which may be more difficult to forecast due to factors outside our control.

Our operating results may also be affected by a number of other factors, some of which are outside of our control, including:

- delays in business operations of our customers or vendors, construction at customer sites and installation, including such delays caused by the impact of the COVID-19 pandemic;
- 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 or foreign regulatory approvals, such as Class A or Class B user licenses in China;
- delays in shipment due to, for example, unanticipated construction delays at customer locations where our products are to be installed, cancellations by customers, natural disasters, global or regional health pandemics or epidemics, or labor disturbances;
- delays in our manufacturing processes or unexpected manufacturing difficulties;
- the 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;
- the timing and level of expenditures associated with our financing activities;
- the effects of foreign currency adjustments;
- changes in accounting principles, such as those related to revenue recognition, or in the interpretation or the application thereof; and
- fluctuations in our gross margins and the factors that contribute to such fluctuations, as described in Management's Discussion and Analysis of Financial Condition and Results of Operations and the risk factor entitled, "Our ability to achieve profitability depends in part on maintaining or increasing our gross margins on product sales and services, which we may not be able to achieve."

Because many of our operating expenses are based on anticipated sales and a high percentage of these expenses are fixed for the short term, a small variation in the timing of revenue recognition can cause significant variations in operating results from quarter to quarter. Our overall gross margins are impacted by a number of factors described in our risk factor entitled "Our ability to achieve profitability depends in part on maintaining or increasing our gross margins on product sales and services, which we may not be able to achieve." If our financial results fall below the expectation of securities analysts and investors, the trading price of our common stock would almost certainly decline.

We report our orders and backlog on a quarterly and annual basis. Unlike revenues, orders and backlog are not defined by U.S. GAAP, and are not within the scope of the audit conducted by our independent registered public accounting firm. Also, for the reasons discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations, our orders and backlog cannot necessarily be relied upon as accurate predictors of future revenues. Order cancellation or significant delays in installation date will reduce our backlog and future revenues, and we cannot predict if or when orders will mature into revenues. Based on historical experience, approximately 26% of our $1,009.4 million open contracts may never result in revenue due to cancellation. In addition, we may experience an increase in cancellations beyond historical levels due to the uncertainties surrounding the effects of the COVID-19 pandemic. Particularly high levels of cancellations or age-outs in one or more periods may cause our revenue and gross margins to decline in current or future periods and will make it difficult to compare our operating results from quarter to quarter. We cannot assure you that our backlog will result in revenue on a timely basis or at all, or that any cancelled contracts will be replaced.

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 platforms. 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 obsolete or less useful 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 platforms.

We consider the competition for the CyberKnife and TomoTherapy platforms to be existing radiation therapy systems, primarily using C-arm linacs, which are 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. ("Varian"), which was recently acquired by Siemens Healthineers, Elekta AB ("Elekta"), ViewRay, Inc., RefleXion Medical and Zap Medical. Varian 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 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. For example, Varian announced in 2012 a line of C-arm gantries, called the Edge systems, which Varian claims are specifically designed for radiosurgery to compete with our CyberKnife platform. 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 both radiosurgical and radiotherapy procedures. In May 2017, Varian launched a radiation therapy product called Halcyon which they have positioned against our TomoTherapy platform.

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. 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 platforms 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 or less useful. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. In addition, some of our competitors may compete by changing their pricing model or by lowering the price of their products. If we are unable to maintain or increase our selling prices, our revenue and gross margins may suffer. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

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 are a significant percentage of our total revenue. The percentage of our revenue derived from sales outside of the Americas region was 73% in fiscal 2021, 66% in fiscal 2020, and 68% in fiscal 2019. 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 in the world or in particular regions or countries in which we do business, including the market volatility resulting from the COVID-19 pandemic as well as the United Kingdom (the "UK") exit from the European Union (the "EU"), or Brexit;
- import delays;
- changes in foreign laws and regulations governing, among other matters, the clearance, approval and sales of medical devices;
- the potential failure to comply with foreign regulatory requirements to sell and market our products;
- longer payment cycles associated with many customers outside the United States;
- inability of customers to obtain requisite government approvals, such as customers in China, including customers of the JV, obtaining one of the limited number of Class A or Class B user licenses available in order to purchase our products;
- effective compliance with privacy, data protection and information security laws, such as the European Union General Data Protection Regulation (the "GDPR");
- adequate coverage and reimbursement for the CyberKnife and TomoTherapy platform 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;
- U.S. trade and economic sanctions policies that are in effect from time to time and the possibility that foreign countries may impose additional taxes, tariffs or other restrictions on foreign trade;
- trade restrictions that are in effect from time to time, including U.S. prohibitions and restrictions on exports of certain products and technologies to certain nations and customers;
- the unfamiliarity of shipping companies and other logistics providers with U.S. export control laws, which may lead to their unwillingness to ship or delays in shipping, our products to certain nations and customers despite such shipments being permitted under such laws;
- U.S. relations with the governments of the foreign countries in which we operate;
- the inability to obtain required export or import licenses or approvals;

- risks relating to foreign currency, including fluctuations in foreign currency exchange rates possibly causing fewer sales due to the strengthening of the U.S. Dollar;

- contractual provisions governed by foreign laws; and

- natural disasters, such as earthquakes and fires, and global or regional health pandemics or epidemics, such as COVID-19 or data privacy or security incidents, that may have a disproportionate effect in certain geographies resulting in decreased demand or decreased ability of our employees or employees of our customers and partners to work and travel.

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.

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

Enhanced international tariffs, including tariffs imposed by the United States and China that affect our products or components within our products, other trade barriers or a global trade war could increase our costs and materially and adversely affect our business operations and financial condition.

Our global business could be negatively affected by trade barriers and other governmental protectionist measures, any of which can be imposed suddenly and unpredictably. There is currently significant uncertainty about the future relationship between the U.S. and various other countries, most significantly China, with respect to trade policies, treaties, government regulations and tariffs.

Since the beginning of 2018, there has been increasing public threats and, in some cases, legislative or executive action, from U.S. and foreign leaders regarding instituting tariffs against foreign imports of certain materials. During the last half of calendar year 2018, the federal government imposed a series of tariffs ranging from 10% to 25% on a variety of imports from China. These tariffs affect certain components, including the linear accelerator for our CyberKnife platforms, which we manufacture in China and import into the U.S., as well as other components that we import into the U.S. from our suppliers. China has responded to these tariffs with retaliatory tariffs ranging from 5% to 25% on a wide range of products from the U.S., which include certain of our products. Higher duties on existing tariffs and further rounds of tariffs have been announced or threatened by the U.S. and Chinese leaders. Although the U.S. and China signed an initial trade deal in January 2020 and China announced a one year tariff exemption for medical linear accelerators in September 2019 (which was further extended through the end of September 2021), there has been a change in the U.S. presidential administration and, for that, and other reasons, there is no assurance that the trade deal will be signed or that the exemption on medical linear accelerators will continue beyond the extended term or that we will continue to qualify for such exemption. If these tariffs continue, if additional tariffs are placed on certain of our components or products, or if any related counter-measures are taken by China, the U.S. or other countries, our business, financial condition and results of operations may be materially harmed. The imposition of tariffs could also increase our costs and require us to raise prices on our products, which may negatively impact the demand for our products in the affected market. If we are not successful in offsetting the impact of any such tariffs, our revenue, gross margins and operating results may be adversely affected.

These tariffs are subject to a number of uncertainties as they are implemented, including future adjustments and changes. The ultimate reaction of other countries and the impact of these tariffs or other actions on the U.S., China, the global economy and our business, financial condition and results of operations, cannot be predicted at this time, nor can we predict the impact of any other developments with respect to global trade. Further, the imposition of additional tariffs by the U.S. could result in the adoption of additional tariffs by China and other countries, as well as further retaliatory actions by any affected country. Any resulting trade war could negatively impact the global market for medical devices, including radiation therapy devices, and could have a significant adverse effect on our business. These developments may have a material adverse effect on global economic conditions and the stability of global financial markets, and they may significantly reduce global trade and, in particular, trade between China and the U.S. Any of these factors could depress economic activity, restrict our access to customers and have a material adverse effect on our business, financial condition and results of operations.

We face risks related to the current global economic environment, including risks arising in connection with the COVID-19 pandemic, which could adversely affect our business, financial condition and results of operations by, among other things, delaying or preventing our customers from obtaining financing to purchase the CyberKnife and TomoTherapy platforms and implement the required facilities to house our systems.

Our business and results of operations are materially affected by conditions in the global markets and the economy generally. Concerns over economic and political stability, the availability of fiscal and monetary stimulus measures to counteract the impact of the COVID-19 pandemic, the level of U.S. national debt, currency fluctuations and volatility; the rate of growth of Japan, China and other Asian economies, unemployment, the availability and cost of credit, inflation levels, trade relations, the duration and severity of the COVID-19 pandemic, energy costs and geopolitical uncertainty have contributed to increased volatility and diminished expectations for the economy and the markets.

Further, the U.S. federal government has called for, or enacted, substantial changes to healthcare, trade, fiscal, and tax policies, which may include changes to existing trade agreements and may have a significant impact on our operations. For example, the Trump administration initiated the imposition of tariffs on certain foreign products, including from China, that have resulted in and may result in future retaliatory tariffs on U.S. goods and products. While there has been a change in the U.S. presidential administration, we cannot predict whether these policies will continue, or if new policies will be enacted, or the impact, if any, that any policy changes could have on our business. If economic conditions worsen or new legislation is passed related to the healthcare system, trade, fiscal or tax policies, customer demand may not materialize to levels we require to achieve our anticipated financial results, which could have a material adverse effect on our business, financial condition and results of operations.

Additionally, uncertain credit markets and concerns regarding the availability of credit, including concerns related to the COVID-19 pandemic, could impact consumer and customer demand for our products, as well as our ability to manage normal commercial 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 by factors such as reduced demand for our products resulting from a slow-down or volatility 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, and delays associated with the ongoing COVID-19 pandemic. For example, 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 platforms. 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 platforms, the cost of which can be substantial. 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. In addition, the ongoing global COVID-19 pandemic and Brexit, has caused, and may continue to cause, uncertainty in the global markets. The risks related to the COVID-19 pandemic are discussed in more detail in our risk factor entitled “The effect of the COVID-19 pandemic, or the perception of its effects, on our operations and the operations of our customers and suppliers, could have a material adverse effect on our business, financial condition, results of operations, or cash flows.” The risks related to Brexit are discussed in more detail in our risk factor entitled “The United Kingdom’s withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our operations.”

The United Kingdom’s withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our operations.

On January 31, 2020, the UK formally withdrew from the EU and entered into a new trade agreement with the EU that took effect on January 1, 2021. The withdrawal of the UK from the EU has created significant uncertainty about the future relationship between the UK and the EU.

Brexit has caused, and may continue to cause, uncertainty in the global markets. The effects of Brexit will also depend on any additional agreements the UK reaches to retain access to EU markets. There is significant uncertainty about the future relationship between the UK and the EU, including with respect to the laws and regulations that will apply as the UK determines which EU laws to replace, including those governing manufacturing, labor, environmental, data protection/privacy, competition, medical sales and advertising and other matters applicable to the medical device industry. In addition, as a result of Brexit, the movement of goods between the UK and the remaining member states of the EU will be subject to additional inspections and documentation checks, leading to possible delays at ports of entry and departure. Moreover, currency volatility could drive a weaker pound which could result in a decrease in the profitability of our sales in the UK. Any adjustments we make to our business and operations as a result of Brexit could result in significant expense and take significant time to complete.

While we have not experienced any material financial impact from Brexit on sales within the UK to date, we cannot predict its future implications. The withdrawal of the UK from the EU and full implementation of a new trade agreement could result in changes that impact our business. For example, the UK Medicines and Healthcare Products Regulatory Agency ("MHRA") established new UK regulations for medical devices whereby the UK will continue to accept the CE mark through June 30, 2023 and thereafter, the UK will require its own product registration and UK Conformity Assessed ("UKCA") mark to be placed on medical devices sold in the UK market, including our products. Any impact from Brexit on our business and operations over the long term will depend, in part, on the outcome of tariff, tax treaties, trade, regulatory and other negotiations the UK conducts as well as its enactment, interpretation and enforcement of new laws and regulations, such as the UK Data Protection Act, which substantially implements the GDPR in the UK, and other UK data protection laws or regulations that may develop in the medium to longer term, affecting matters such as data transfers to and from the UK. We continue to monitor and review the impact of any resulting changes to EU or UK law that could affect our operations.

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 platforms 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 regulatory requirements and at an acceptable cost. Our linear accelerator components are extremely complex devices and require significant expertise to manufacture, and we may encounter difficulties in scaling up production of the CyberKnife or TomoTherapy platforms, including problems with quality control and assurance, component supply shortages, increased costs, shortages of qualified personnel, the long lead time required to develop additional radiation-shielded facilities for purposes of testing our products and/or difficulties associated with compliance with local, state, federal and foreign regulatory requirements. In addition, the COVID-19 pandemic has and may continue to impact the supply of key components such that we may not receive them in a timely manner, in sufficient quantities, or at reasonable cost. We may also experience limitations in the availability of qualified personnel as a result of shelter-in-place rules, quarantine requirements, or illness. 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 Regulations ("QSR") for any products imported into, or sold within, the U.S. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, production process and 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 licensing and other requirements and licenses applicable to manufacturers of medical devices, and we are required to comply with International Organization for Standardization ("ISO"), quality system standards in order to produce products for sale in Europe and Canada, as well as various other foreign laws and regulations. Because our manufacturing processes include the production of 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 being 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.

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 with material or major observations that are not promptly corrected, 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 ability to generate sales 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 occur, 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.

If we are unable to develop new products or enhance existing products to meet our customers' needs and compete favorably in the market, 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 that will meet our customers' needs provide novel features and compete favorably in the market. The CyberKnife and TomoTherapy platforms, which are currently our principal products, are technologically complex and must keep pace with, among other things, the products of our competitors and new technologies. 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 inability to develop, gain regulatory approval for or supply competitive products to the market as quickly and effectively as our competitors could limit market acceptance of our products and reduce our sales.

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, will be affected by our ability to:

- properly identify and address customer needs;
- prove feasibility of new products in a timely manner;
- educate physicians about the use of new products and procedures;
- comply with internal quality assurance systems and processes timely and efficiently;

- manage 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 new 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;
- meet our product development plan and launch timelines;
- improve manufacturing yields of components; and
- manage customer demands for retrofits of both old and new products.

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 QSR. 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.

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 into new and growing markets as well as expand our manufacturing capacities and sales and marketing capabilities. 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, all of which will be more difficult to accomplish the longer that our employees must work remotely from home. 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 make improvements to our business operations. We cannot be certain that our personnel, systems, procedures and internal controls will be adequate to support our future operations and any expansion of our systems and infrastructure may require us to commit significant additional financial, operational and management resources. If we cannot manage our growth effectively, our business will suffer.

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, sale, installation, servicing, and support of medical device products. We may be held liable if one of our CyberKnife or TomoTherapy platforms or our Precision Treatment Planning with iDMS Data Management System software causes or contributes to 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 alleged weaknesses in physician training and services associated with our products may result in unsatisfactory patient outcomes and 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 adverse publicity. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs that may not be covered by

insurance and be time-consuming to defend. We may also be subject to claims for personal injury, 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. Adverse publicity related to any product liability actions may cause patients to be less receptive to radiation therapy generally or our products specifically and could also result in additional regulation that could adversely affect our ability to promote, manufacture and sell 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 of coverage. 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 our systems or software 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 because of design or manufacturing, supplied parts, 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 initiated recalls and other product corrections in the past. In fiscal year 2021, we voluntarily initiated one recall related to the TomoTherapy platform and one recall on the CyberKnife platform both of which were reported to the FDA We are committed to the safety and precision of our products and while no serious adverse 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 or that similar or more significant product recalls will not occur in the future. A required notification of a correction or removal 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, corrections or recalls, especially if accompanied by unfavorable publicity, patient injury or termination of customer contracts, could result in incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

Our reliance on single-source suppliers for critical components of the CyberKnife and TomoTherapy platforms 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 to assemble the CyberKnife and TomoTherapy platforms, including, with respect to the CyberKnife platform, the robot, couch and magnetron and, with respect to the TomoTherapy platforms, the couch, solid state modulator and magnetron. If these suppliers were to limit or reduce the sale of such components to us, or if these suppliers were to experience financial difficulties or other problems that prevented them from supplying us with the necessary components, these events could have a material adverse effect on our business, financial condition and results of operations. These sole source and other suppliers could also be subject to quality and performance issues, materials shortages, excess demand, reduction in capacity and other factors that may disrupt the flow of goods to us; thereby adversely affecting our business and customer relationships. If any single-source supplier was 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. The disruption or termination of the supply of components could cause a significant increase in the costs of these components, which could affect our results of operations. In some cases, alternative suppliers may be located in the same geographic area as existing suppliers, and are thus subject to the same economic, political and geographic factors that may affect existing suppliers to meet our demand. 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 platforms, 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 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 platforms, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements 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. In addition, we have experienced

delays in obtaining components and materials from suppliers as a result of the impact of the COVID-19 pandemic. The disruption or termination of the supply of key components for the CyberKnife or TomoTherapy platforms 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 adversely affect our reputation and results of operations.

Failures of components also affect the reliability and performance of our products, can reduce customer confidence in our products, and may adversely affect our financial performance. From time to time, we may receive components that do not perform according to their specifications, which could result in the inability of such customer utilize our systems in their practices until such components are replaced. Any future difficulty in obtaining reliable component parts could result in increased customer dissatisfaction and adversely affect our reputation, our ability to protect and retain our installed base of customers and results of operations.

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, sales, marketing, operations and research and development staff. Our future success will depend in part on our ability to retain our key employees and to identify, hire and retain additional personnel. Additionally, the COVID-19 pandemic may interfere with our ability to hire or retain personnel. Competition for qualified personnel in the medical device industry 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 face significant competition for key personnel and other employees, particularly in the San Francisco Bay Area where our headquarters is located, from other medical equipment and software manufacturers, technology companies, universities and research institutions. As a result, we may not be able to retain our existing employees or hire new employees quickly enough to meet our needs. Moreover, we have in the past conducted reductions in force in order to optimize our organizational structure and reduce costs, and certain senior personnel have also departed for various reasons. At the same time, we may face high turnover, requiring us to expend time and resources to source, train and integrate new employees. The challenging markets in which we compete for talent may also require us to invest significant amounts of cash and equity to attract and retain employees. In addition, a significant portion of our compensation to our key employees is in the form of stock related grants. A prolonged depression in our stock price could make it difficult for us to retain our key and other employees and recruit additional qualified personnel and we may have to pay additional compensation to employees to incentivize them to join or stay with us. Further, the COVID-19 pandemic has impacted and may continue to impact our business operations, including our employees, customers and partners, and there is substantial uncertainty in the nature and degree of its continued effects over time. 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 key personnel and other employees, we may be unable to continue to grow our business successfully.

Disruption of critical information technology systems, infrastructure and data or cyberattacks or other security breaches or incidents could harm our business and financial condition.

Information technology helps us operate more efficiently, interface with customers, maintain financial accuracy and efficiency and accurately produce our financial statements. If we do not allocate and effectively manage the resources necessary to build, sustain and secure the proper technology infrastructure, we could be subject to transaction errors, processing inefficiencies, the loss of customers, business disruptions or the loss, unavailability of or damage to intellectual property through a cyberattack (including ransomware and other attacks) or other security breach or incident. Regardless of the resources we allocate and the effectiveness with which we manage them, we face a risk of cyberattacks and other security breaches and incidents. Any cyberattacks or other security breaches or incidents we suffer could expose us to a risk of lost or corrupted information, unavailability of information, unauthorized disclosure of information, claims, litigation and possible liability to employees, customers and others, and investigations and proceedings by regulatory authorities. In addition, we have moved some of our data and information to a cloud computing system, where applications and data are hosted, accessed and processed through a third party provider over a broadband internet connection. Consequently, we are dependent on the security measures of the provider of this cloud computing system, and we may also utilize third-party providers for other services such as human resources, electronic communications and financial functions. There have been and may continue to be significant attacks on certain third-party providers, and we cannot guarantee that our or our third-party providers' systems and networks have not been breached or that they do not contain exploitable defects or bugs that could result in a breach of or disruption to our systems and networks or the systems and networks of third parties that support us and our platform. Further, we could be subject to outages, cyberattacks, and other security breaches and

incidents suffered by the third party service provider. In the current COVID-19 pandemic, more of our personnel and the personnel of our service providers are working remotely, which increases the risks of security breaches and cyberattacks.

If our data management systems or those of our third-party providers 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, cyberattacks, 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. As a result, our information systems require an ongoing commitment of significant resources to maintain, protect, and enhance existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving legal and regulatory standards, the increasing need to protect patient and customer information, and the information technology needs associated with our changing products and services. There can be no assurance that our process of consolidating the number of systems we operate, upgrading and expanding our information systems capabilities, continuing our efforts to build security into the design of our products, protecting and enhancing our systems and developing new systems to keep pace with continuing changes in information processing technology will be successful or that additional systems issues will not arise in the future, or that we will not suffer from disruptions or other systems issues even if we devote substantial resources and personnel to these efforts.

In addition, data privacy breaches and incidents arising from errors, malfeasance or misconduct by employees, contractors or others with permitted access to our systems may pose a risk that sensitive data, including individually identifiable data, may be exposed to unauthorized person or to the public and may compromise our security systems. There can be no assurance that any efforts we make to prevent against such data privacy breaches or incidents will prevent breakdowns or breaches or incidents in our systems or those of our third-party service providers that could adversely affect our business. Third parties may also attempt to fraudulently induce employees or customers into disclosing user names, passwords or other sensitive information, which may in turn be used to access our information technology systems. For example, our employees have received in the past and likely will continue to receive "phishing" e-mails attempting to induce them to divulge sensitive information. In addition, unauthorized persons may attempt to hack into our products or systems to obtain personal data relating to patients or employees, our confidential or proprietary information or confidential information we hold on behalf of third parties, which, if successful, could pose a risk of loss, unavailability, or corruption of, or unauthorized access to or acquisition of, data, risk to patient safety and risk of product recall. As the techniques used to obtain unauthorized access to our systems change frequently and may be difficult to detect, we may not be able to anticipate and prevent these intrusions or mitigate them when they occur. Third-party service providers store and otherwise process certain personal data and other confidential or proprietary information of ourselves and third parties on our behalf, and these service providers face similar risks. Moreover, we manufacture and sell hardware and software products that allow our customers to store confidential information about their patients. Both types of products are often connected to and reside within our customers' information technology infrastructures. We do not have measures to configure or secure our customers' equipment or any information stored in our customers' systems or at their locations, which is the responsibility of our customers. While we have implemented security measures designed to protect our hardware and software products from unauthorized access and cyberattacks, these measures may not be effective in securing these products, particularly since techniques used to obtain unauthorized access, or to sabotage systems, change frequently and may not be recognized until launched against a target. A breach of network security or systems of ourselves or our third-party service providers or other events that cause the loss or unauthorized use or disclosure of, or access by third parties to, sensitive information stored by us or our customers, or the perception that any of these have occurred, could have serious negative consequences for our business, including loss of information, indemnity obligations, possible fines, penalties and damages, reduced demand for our products and services, an unwillingness of our customers to use our products or services, harm to our reputation and brand, and time-consuming and expensive litigation, any of which could have an adverse effect on our financial results.

Any actual or perceived failure by us to comply with legal or regulatory requirements related to privacy, cyber security and data protection in one or multiple jurisdictions could result in proceedings, actions or penalties against us.

There are numerous state, federal and foreign laws, regulations, decisions and directives regarding privacy and the collection, storage, transmission, use, processing, disclosure and protection of personally identifiable information and other personal, customer or other data, the scope of which is continually evolving and subject to differing

interpretations. Our worldwide operations mean that we are subject to privacy, cyber security and data protection laws and regulations in many jurisdictions, and that some of the data we process, store and transmit may be transmitted across countries. For example, in the U.S., Health Insurance Portability and Accountability Act ("HIPAA") privacy and security rules require us as a business associate to protect the confidentiality of patient health information, and the Federal Trade Commission has consumer protection authority, including regarding privacy and cyber security. In Europe, the General Data Protection Regulation ("GDPR"), which went into effect in May 2018, imposes several stringent requirements for controllers and processors of personal data that will increase our obligations and, in the event of violations, may impose significant fines of up to the greater of 4% of worldwide annual revenue or €20 million. In the UK, the Data Protection Act of 2018 and the UK GDPR, which collectively implement material provisions of the GDPR and provide for penalties for noncompliance of up to the greater of £17.5 million or four percent of worldwide revenues.

Data transfer and localization requirements related to personally identifiable information also appear to be increasing and becoming more complex. With regard to transfers to the U.S. of personal data (as such term is used in the GDPR and applicable EU member state legislation, and as similarly defined under the proposed ePrivacy Regulation) from our employees and European customers and users, both the EU-U.S. Privacy Shield and EU Model Clauses have been subject to legal challenge. In July 2020, the Court of Justice of the European Union ("CJEU") released a decision in the Schrems II case (Data Protection Commissioner v. Facebook Ireland, Schrems) (the "CJEU Decision"), declaring the EU-U.S. Privacy Shield invalid and imposing additional obligations in connection with the use of another mechanism for cross-border personal data transfers from the European Economic Area ("EEA"). Although the Standard Contractual Clauses issued by the European Commission (the "SCCs") remain a valid means to transfer personal data from the European Economic Area ("EEA"), the CJEU imposed additional obligations in connection with the use of the Standard Contractual Clauses. The CJEU Decision, the revised SCCs, regulatory guidance and opinions, and other developments relating to cross-border data transfer may require us to implement additional contractual and technical safeguards for any personal data transferred out of the EEA, which may increase compliance costs, lead to increased regulatory scrutiny or liability, may require additional contractual negotiations, and may adversely impact our business, financial condition and operating results.

China and Russia have also passed laws that require individually identifiable data on their citizens to be maintained on local servers and that may restrict transfer or processing of that data. The current U.S. administration is engaged in a comprehensive evaluation of national security concerns and other risks relating to the transfer of personally identifiable information from the United States to China, and on June 9, 2021, U.S. President Joseph Biden signed an executive order instituting a framework for determining national security risks of transactions that involve applications connected to governments or militaries of certain foreign adversaries or that collect sensitive personal data from U.S. consumers. In 2019, an executive order citing national security risks in the telecommunications sector served to block U.S. companies from buying Chinese-made Huawei and ZTE products. If our operations, including those involving the processing of U.S.-collected data such as medical imagery, through the JV in China, come to be perceived as a U.S. national security risk, those operations may become subject to executive orders, sanctions, or other measures. Any ban or other restriction on our transfer of data to the JV in China may increase costs as we seek operational and data processing alternatives.

New and proposed privacy, cybersecurity, and data protection laws are also providing new rights to individuals and increasing the penalties associated with non-compliance. For example, the California Consumer Privacy Act (the "CCPA"), as modified by the California Privacy Rights Act, imposes stringent data privacy and data protection requirements for the data of California residents, and provides for penalties for noncompliance of up to $7,500 per violation, as well as a private right of action from individuals in relation to certain security breaches.

Additionally, a new privacy law, the California Privacy Rights Act ("CPRA"), was approved by California voters in November 2020. The CPRA creates obligations relating to consumer data beginning on January 1, 2022, with implementing regulations expected on or before July 1, 2022, and enforcement beginning July 1, 2023. The CPRA significantly modifies the CCPA, potentially resulting in further uncertainty and requiring us to incur additional costs and expenses in an effort to comply. We will continue to monitor developments related to the CPRA and anticipate additional costs and expenses associated with CPRA compliance. The enactment of the CCPA is prompting a wave of similar legislative developments in other states in the U.S., which could create the potential for a patchwork of overlapping but different state laws. For example, in March 2021, Virginia enacted a Consumer Data Protection Act that will go into effect January 1, 2023, and on June 8, 2021, Colorado enacted a Colorado Privacy Act that takes effect on July 1, 2023. These new state laws share similarities with the CCPA, CPRA, and legislation proposed in other states. We cannot fully predict the impact of the CCPA, CPRA, or other new or proposed legislation on our business or operations, but the restrictions imposed by these laws and regulations may limit the

use and adoption of our products, reduce overall demand for our products, require us to modify our data handling practices and impose additional costs and burdens, including risks of regulatory fines, litigation and associated reputational harm. In addition, U.S. and international laws that have been applied to protect user privacy (including laws regarding unfair and deceptive practices in the U.S. and GDPR in the EU) may be subject to evolving interpretations or applications in light of privacy developments. As a result, we may be subject to significant consequences, including penalties and fines, for any failure to comply with such laws, regulations and directives.

Privacy, cyber security and data protection legislation around the world is comprehensive and complex and there has been a recent trend towards more stringent enforcement of requirements regarding protection and confidentiality of personal data. The restrictions imposed by such laws and regulations may limit the use and adoption of our products and services, reduce overall demand for our products and services, require us to modify our data handling practices and impose additional costs and burdens. With increasing enforcement of privacy, cyber security and data protection laws and regulations, there is no guarantee that we will not be subject to enforcement actions by governmental bodies or that our costs of compliance will not increase significantly. Enforcement actions can be costly and interrupt regular operations of our business. In addition, there has been a developing trend of civil lawsuits and class actions relating to breaches of consumer data held by large companies. While we have not been named in any such suits, if a substantial breach or loss of data from our records were to occur, we could become a target of such litigation. Any inability to adequately address privacy and security concerns, even if unfounded, or comply with applicable laws, regulations, policies, industry standards, contractual obligations or other legal obligations could result in additional cost and liability to us, damage our reputation, inhibit sales and adversely affect our business. Our failure to comply with applicable laws and regulations could result in enforcement action against us, including fines and public censure, claims for damages by customers and other affected individuals, damage to our reputation and loss of goodwill (both in relation to existing customers and prospective customers), any of which could harm our business, results of operations and financial condition.

If third-party payors do not provide sufficient coverage and reimbursement to healthcare providers for use of the CyberKnife and TomoTherapy platforms or if the number of patients covered by health insurance reduces, demand for our products and our revenue could be adversely affected.

Our customers rely significantly on reimbursement from public and private third-party payors for CyberKnife and TomoTherapy platform procedures. Our ability to commercialize our products successfully and increase market acceptance of our products will depend in significant part on the extent to which public and private third-party payors provide adequate coverage and reimbursement for procedures that are performed with our products and the extent to which patients that are treated by our products continue to be covered by health insurance. Third-party payors may establish or change the reimbursement for medical products and services that could significantly influence the purchase of medical products and services. In addition, actions by the government, downturns in the economy and other factors outside of our control could negatively affect the number of individuals covered by health insurance. For example, in connection with COVID-19-related layoffs, many individuals have lost their employer-covered health insurance and there is uncertainty as to when or if such coverage will be re-established. If reimbursement policies or other cost containment measures are instituted in a manner that significantly reduces the coverage or payment for the procedures that are performed with our products or if there is a prolonged reduction in the number of patients eligible to be treated by our products that are covered by health insurance, our revenue may decline, 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 addition, the Centers for Medicare and Medicaid Services (“CMS”) reviews reimbursement rates annually and may implement significant changes in future years, which could discourage existing and potential customers from purchasing or using our products. Further, outside of the U.S., reimbursement practices vary significantly by country. Market acceptance of our products may depend on the availability and level of coverage and reimbursement in any country within a particular time.

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 platforms have advantages over competing products and technologies, we do not have sufficient clinical data demonstrating these advantages for all tumor indications. 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. We also have limited clinical data directly comparing the effectiveness of the CyberKnife platform to other competing platforms. Future patient studies or clinical experience may indicate that treatment with the CyberKnife platform does not improve patient survival or outcomes.

Likewise, because the TomoTherapy platform have only been on the market since 2003, we have limited complication or patient survival rate data with respect to treatment using the systems. 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 platform. If future patient studies or clinical experience do not support our beliefs that the TomoTherapy platform offer a more advantageous treatment for a wide variety of cancer types, use of the systems could fail to increase or could decrease, and our business would therefore be adversely affected.

Such results could reduce the rate of reimbursement by both public and private third-party payors for procedures that are performed with our products, slow the adoption of our products by physicians, significantly reduce our ability to achieve expected revenues and could prevent us from being 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.

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

Customer service is a critical element of our sales strategy. Third-party logistics providers store most of our spare parts inventory in depots around the world and perform a significant portion of our spare parts logistics and shipping activities. If any of our logistics providers terminates its relationship with us, suffers an interruption in its business, including as a result of COVID-19, significantly increases fees for services 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 or at a higher cost and our reputation, business, financial condition and results of operations may be adversely affected.

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 that 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 U.S. or foreign patents held by them.

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 that 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 and result in costly litigation and diversion of technical and management personnel. Some of our 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 funds, if 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 obtain a license or are 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 are unable to obtain a license or successfully redesign our system, we might be prevented from selling such 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, pay ongoing royalties or otherwise settle such matter upon terms that are unfavorable to us. In these circumstances, we may be unable to sell our products at competitive prices or at all, and our business and operating results could 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 those employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against claims of this nature, litigation could result in substantial costs and be a distraction to management.

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, patent reform legislation or precedent could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents.

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, including in case of a security breach involving our intellectual property. 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 also may be countries in which we sell or intend to sell the CyberKnife or TomoTherapy platforms 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 U.S. and in foreign countries protecting aspects of the CyberKnife and TomoTherapy platforms, our pending U.S. 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. In addition, many countries limit the enforceability of patents against certain third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries.

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, such as China where the JV operates, may not protect our intellectual property rights to the same extent as do the laws of the United States and, even if they do, uneven enforcement and procedural barriers may exist in such countries. In the event a competitor or other third party infringes upon our patent or other intellectual property rights or otherwise misappropriates such 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. Damage awards resulting from successful litigation in foreign jurisdictions may not be in amounts commensurate with damage awards in the U.S. 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.

Additionally, we have written agreements with collaborators regarding the ownership of intellectual property arising from our collaborations. These agreements generally provide that we must negotiate certain commercial rights with collaborators with respect to joint inventions or inventions made by our collaborators that arise from the results of the collaboration. In some instances, there may not be adequate written provisions to address clearly the resolution of intellectual property rights that may arise from a collaboration. If we cannot successfully negotiate sufficient ownership and commercial rights to the inventions that result from our use of a third-party collaborator's materials where required, or if disputes otherwise arise with respect to the intellectual property developed with the use of a collaborator's technology, we may be limited in our ability to utilize these intellectual property rights. In addition, we may face claims by third parties that our agreements with employees, contractors or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. Litigation may be necessary to resolve an ownership dispute, and if we are not successful, we may be precluded from using certain intellectual property or may lose our exclusive rights in that intellectual property. Either outcome could harm our business.

The policies and procedures 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.

Unfavorable results of legal proceedings could materially and adversely affect our financial condition.

We are and may become a party to legal proceedings, claims and other legal matters in the ordinary course of business or otherwise. These legal proceedings, claims and other legal matters, regardless of merit, may be costly, time-consuming and require the attention of key management and other personnel. The outcomes of such matters are uncertain and difficult to predict. If any such matters are adjudicated against us, in whole or in part, we may be subject to substantial monetary damages, disgorgement of profits and injunctions that prevent us from operating our business, any of which could materially and adversely affect our business and financial condition. We cannot guarantee that our insurance coverage will be sufficient to cover any damages awarded against us. Further, legal proceedings, and any adverse resolution thereof, can result in adverse publicity and damage to our reputation, which could adversely impact our business.

Because the majority of our product revenue is derived from sales of the CyberKnife and TomoTherapy platforms, which have a long and variable sales and installation cycle, our revenues and cash flows may be volatile and difficult to predict.

Our primary products are the CyberKnife and TomoTherapy platforms. We expect to generate substantially all of our revenue for the foreseeable future from sales of and service contracts for the CyberKnife and TomoTherapy platforms. The CyberKnife and TomoTherapy platforms have lengthy sales and purchase order cycles because they are major capital equipment items and require the approval of senior management at purchasing institutions. In addition, sales to some of our customers are subject to competitive bidding or public tender processes. These approval and bidding processes can be lengthy. 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 U.S. 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 platform, we negotiate and enter into a definitive purchase contract with the customer. The negotiation of terms that are not standard for Accuray may require additional time and approvals. Typically, following the execution of the contract, the customer begins the building or renovation of a radiation-shielded facility to house the CyberKnife or TomoTherapy platform, which together with the subsequent installation of the CyberKnife or TomoTherapy platform, can take up to 24 months to complete. 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 was denied for installation at a specific hospital or treatment center, our CyberKnife or TomoTherapy platform 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 platform can be installed, which can result in additional construction and installation delays. Our sales and installations of CyberKnife and TomoTherapy platforms tend to be heaviest during the third month of each fiscal quarter.

Under our revenue recognition policy, we recognize revenue attributable to a CyberKnife or TomoTherapy platform and related upgrades when control of a platform or upgrade is transferred, which generally happens when a system or upgrade is shipped, while an element of installation is deferred until performed. Events beyond our control may delay shipment or installation and the satisfaction of contingencies required to receive cash inflows and recognition of revenue associated with shipment or installation. Such events may include a delay in the construction at the customer site or customer delay in obtaining receipt of regulatory approvals such as certificates of need. In addition, as a result of the COVID-19 pandemic and the disruption to their operations, certain customers have experienced delays in construction, shipment or installation and some have failed to timely pay their obligations when due. If the events which are beyond our control delay the customer from obtaining funding or financing of the entire transaction, we may not be able to recognize revenue for the sale of the entire system because the collectability of contract consideration is not reasonably assured.

The long sales cycle, together with delays in the shipment of CyberKnife and TomoTherapy platforms or customer cancellations that could affect our ability to recognize revenue, could 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. As a result 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.

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 number of distributors in our international markets. We cannot control the efforts and resources our third-party distributors will devote to marketing the CyberKnife or TomoTherapy platforms. Our distributors may not be able to successfully market and sell the CyberKnife or TomoTherapy platforms, including as a result of concerns regarding the COVID-19 pandemic, may not devote sufficient time and resources to support the marketing and selling efforts and may not market the CyberKnife or TomoTherapy platform 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 oversee their activities such that they are in compliance with all laws that govern their activities, such as the U.S. Foreign Corrupt Practices Act (“FCPA”), and we are dependent on their ability to do so effectively. 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 platforms, and our ability to sell and service the CyberKnife or TomoTherapy platforms in the region formerly serviced by such terminated distributor could be materially and adversely affected. Any of our distributors could become insolvent or otherwise become unable to pay amounts owed to us when due. If any of these distributor relationships end and are not replaced, our revenues from product sales or the ability to service our products in the territories serviced by these distributors could be adversely affected. Any of these factors could materially and 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 comply with regulatory or legal requirements that results in fines or penalties, do not actively market the CyberKnife or TomoTherapy platforms or do not otherwise perform under our distribution agreements, our potential for revenue from international markets may be dramatically reduced, and our business could be harmed.

The high unit price of the CyberKnife and TomoTherapy platforms, 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 platforms and the relatively small number of units shipped each quarter, each shipment of a CyberKnife or TomoTherapy platform can represent a significant percentage of our revenue for a particular quarter. Therefore, if we do not ship a CyberKnife or TomoTherapy platform when anticipated, we will not be able to recognize the associated revenue and our operating results will vary significantly from our expectations. This is of particular concern when the economic environment is volatile, such as the current economic environment. For example, during periods of severe economic volatility, such as during the COVID-19 pandemic, we have had customers cancel or postpone orders for our CyberKnife and TomoTherapy platforms 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.

As a strategy to assist our sales efforts, we may offer extended payment terms, which may potentially result in higher days sales outstanding, reduced cash flows in a particular period and greater payment defaults.

We offer longer or extended payment terms for qualified customers in some circumstances. As of June 30, 2021, customer contracts with extended payment terms of more than one year amounted to approximately 4% of our total 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. In addition, as a result of the COVID-19 pandemic and the resulting disruption to the operations of our customers, we have experienced and may continue to experience increased requests by our customers for extended payment terms as well as temporary suspensions of service and the corresponding payment obligations. This may result in an increase in payment defaults, which would negatively affect our revenue. In addition, any increase in days sales outstanding could also negatively affect our cash flow.

We may attempt to acquire new businesses, products or technologies, or enter into strategic collaborations or alliances, including forming joint ventures, 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, including forming joint ventures, such as the JV, rather than through internal development. The identification of suitable acquisition, alliance and joint venture partner candidates can be difficult, time consuming, and costly, and we may not be able to successfully complete identified acquisitions, alliances or joint ventures. Other companies may compete with us for these strategic opportunities. In addition, even if we successfully complete an acquisition, alliance or joint venture, we may not be able to successfully integrate newly acquired organizations, products or technologies into our operations or timely and effectively commence operations of any joint venture or other alliance because the process of integration could be expensive, time consuming and may strain our resources. Furthermore, we may be required to contribute significant amounts of capital or incur losses in the initial stages of an alliance or joint venture, particularly as selling and marketing

activities increase ahead of expected long-term revenue. For example, we completed our capital contributions to the JV in the second quarter of fiscal 2020 and one system upgrade in the quarter ended September 30, 2020. Further contributions may be necessary in the future as the joint venture expands its operations in China in order to achieve our long-term strategy in China. In addition, the process for customers of the acquired company, alliance or joint venture to comply with local or foreign regulatory requirements that may be required to purchase our products may cause delays in the acquisition target, alliance partner or joint venture's ability to conduct business. For example, any delays in customers in China to obtain Class A or Class B user licenses or in the subsequent tender process to complete the sale could affect the JV's expected ability to initiate sales and recognize revenue in China. Furthermore, the products and technologies that we acquire, jointly develop, or with respect to which we collaborate may not be successful, or may require significantly greater resources and investments than we originally anticipated. Implementing or acquiring new lines of business or offering new products and services within existing lines of business can affect the sales and profitability of existing lines of business or products and services, including as a result of sales channel conflicts. In addition, we may not be in a position to exercise sole decision making authority regarding any strategic collaboration, alliance or joint venture, which could result in impasses on decisions or decisions made by our partners, and our partners in such collaborations, alliances or joint ventures may have economic or business interests that are, or may become, inconsistent with our interests. Collaborations, alliances and joint ventures can be difficult to manage and may involve significant expense and divert the focus and attention of our management and other key personnel away from our existing businesses. With respect to any acquisition, 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. In addition, with respect to joint ventures, we may not be able to attract qualified employees, acquire customers or develop reliable supply, distribution or other partnerships. As a result of certain collaborations, alliances and joint ventures we could face potential damage to existing customer relationships or lack of customer acceptance or inability to attract new customers. These risks could be magnified to the extent that any new collaboration, alliance or joint venture would result in a significant increase in operations in developing markets. Future acquisitions or alliances could also 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. Further, acquisition targets, alliance partners and joint ventures may also operate in foreign jurisdictions with laws and regulations with which we have limited familiarity, which could adversely impact our ability to comply with such laws and regulations and may lead to increased litigation risk. Such laws may also offer us inadequate or less intellectual property protection relative to U.S. laws, which may impact our ability, as well as the ability of the acquisition target, alliance partner and joint venture, to safeguard our respective intellectual property from infringement and misappropriation. As a result of these and other factors, we may not realize the expected benefits of any acquisition, collaboration, joint venture or strategic alliance or such benefits may not be realized at expected levels or within the expected time period. The failure to successfully consummate such strategic transactions and effectively integrate and execute following such consummation may have an adverse impact on our growth, profitability, financial position and results of operations.

We may not be able to fully utilize certain tax loss carryforwards.

As of June 30, 2021, we had approximately $321.3 million and $132.2 million in federal and state net operating loss carry forwards, respectively. The federal and state carryforwards expire in varying amounts beginning in 2025 for federal and 2022 for state purposes. In addition, as of June 30, 2021, we had federal and state research and development tax credit carryforwards of approximately $24.6 million and $21.0 million, respectively. Such research credits for federal tax purposes and in states other than California will begin to expire starting in 2022, while the California research credits have no expiration date. The Tax Act legislation, as modified by the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), among other things, includes changes to the rules governing net operating losses. Net operating losses arising in tax years beginning after December 31, 2017 are subject to an 80% of taxable income limitation (as calculated before taking the net operating losses into account) when utilized in tax years beginning after March 31, 2021. It is uncertain if and to what extent various states will conform to the Tax Act or CARES Act. In addition, utilization of our net operating loss and credit carry forwards is subject to annual limitation due to the application of the ownership change limitations provided by Section 382 of the Internal Revenue Code and similar state provisions to us. Future changes in our stock ownership, including future offerings, as well as changes that may be outside of our control, could result in an ownership change under Section 382 of the Internal Revenue Code.

We are subject to the tax laws of various foreign jurisdictions, which are subject to unanticipated changes and interpretation and could harm our future results.

The application of tax laws of various foreign jurisdictions is subject to interpretation and depends on our ability to operate our business in a manner consistent with our corporate structure and intercompany arrangements. The taxing authorities of jurisdictions in which we operate may challenge our methodologies for valuing intercompany arrangements including our transfer pricing or determine that the manner in which we operate our business does not achieve the intended tax consequences. The application of tax laws can also be subject to conflicting interpretations by tax authorities in the various jurisdictions we operate. It is not uncommon for taxing authorities in different countries to have conflicting views, with respect to, among other things, the manner in which the arm's length standard is applied for transfer pricing purposes.

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. If the U.S. Dollar strengthens, it could cause potential delays in orders and we may see our sales decline. 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.

If we fail to maintain an effective system of internal control over financial reporting, our ability to produce timely and accurate financial results could be impaired. 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 maintain effective controls and provide timely and reliable financial reports, our business and operating results could be harmed.

A failure to implement and maintain effective internal control over financial reporting 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, it may be difficult to timely determine the effectiveness of our financial reporting systems and internal controls because of the complexity of our financial model. We recognize revenue from a range of transactions including CyberKnife and TomoTherapy platform sales and services. The CyberKnife and TomoTherapy platforms are complex products that contain both hardware and software elements. The complexity of the CyberKnife and TomoTherapy platforms and of our financial model used to recognize revenue on such systems requires us to process a greater variety of financial transactions than would be required by a company with a less complex financial model. Accordingly, efforts to timely remediate deficiencies or weaknesses in our internal controls would likely be more challenging for us than they would for a company with a less complex financial model. Furthermore, if we were to find an internal control deficiency or material weakness, we may be required to amend or restate historical financial statements, which would likely have a negative impact on our stock price.

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

At June 30, 2021, we had $116.4 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 cash in our operating accounts and cash invested in money market funds. To date, we have experienced no material realized losses on 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 ("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.

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 cash equivalents 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.

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 depending on the state of economic and capital markets environments at the time, as well as the state of our business, operating results and financial condition. For example, any sustained disruption in the capital markets from the COVID-19 pandemic could negatively impact our ability to raise capital. 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 or desired, will be available in amounts or on terms acceptable to us, if at all.

Risks Related to the Regulation of our Products and Business

Modifications, upgrades, new indications and future products related to the CyberKnife or TomoTherapy Systems or the Precision Treatment Planning and iDMS Data Management System software may require new FDA 510(k) clearances or premarket approvals and similar licensing or approvals in international markets. Such modifications, or any defects in design, manufacture or labeling may require us to recall or cease marketing the affected systems or software until approvals or clearances are obtained.

The CyberKnife and TomoTherapy platforms as well as the Precision Treatment Planning with iDMS Data Management System software are medical devices that are subject to extensive regulation in the United States by local, state and the federal government, including the FDA. The FDA cleared the latest imaging feature for the Radixact System, ClearRT™, under K202412 on December 18, 2020. The FDA regulates virtually all aspects of a medical device 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 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, lengthy and unpredictable. 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. Additionally, outside of the United States, our products are subject to clearances and approvals by foreign governmental agencies similar to the FDA. In order to market our products internationally, we must obtain licenses or approvals from these governmental agencies, which could include local requirements, safety standards, testing or certifications, and can be time consuming, burdensome and uncertain. 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 or any foreign governmental agency in a timely fashion, if at all. 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 only be marketed for the indications for which they are approved or cleared. The FDA and other foreign governments also may change their policies, adopt additional regulations, or revise existing regulations, each of which could prevent or delay approval or clearance of our device, or could impact our ability to market our currently approved or cleared device. We are also subject to medical device reporting regulations, which require us to report to the FDA and other international governmental agencies 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 the QSR in the U.S. and ISO 13485 certification in many international markets, compliance with which is necessary to receive FDA and other international clearances or approvals to market new products and is necessary for us to be able to continue to market a cleared or approved product in the United States or globally. After a product is placed in the market, we are also subject to regulations by the FDA and Federal Trade Commission related to the advertising and promotion of our products to ensure our claims are consistent with our

regulatory clearances, that there is scientific data to substantiate our claims and that our advertising is not false or misleading. 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 platforms as well as the Precision Treatment Planning with iDMS Data Management System software. Upgrades previously released by us required 510(k) clearance and international registration before we were able to offer them for sale. We expect our future upgrades will similarly require 510(k) clearance or approval; however, future upgrades may be subject to substantially more time-consuming data generation requirements and uncertain premarket approval or clearance processes. 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. 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 premarket approvals or 510(k) clearances for modifications in a timely fashion, if at all.

We have obtained 510(k) clearance for the CyberKnife platform for the treatment of conditions anywhere in the body when radiation treatment is indicated, and we have obtained 510(k) clearance for the TomoTherapy platform to be used as integrated systems for the planning and delivery of IMRT for the treatment of cancer. We have made modifications to the CyberKnife and TomoTherapy platforms 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 platforms 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.

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. 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 platform, 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.

We are subject to federal, state and foreign laws and regulations applicable to our operations, the violation of which could result in substantial penalties and harm our business.

In addition to regulation by the FDA and similar governmental authorities in other countries, our operations are subject to other laws and regulations, such as laws and rules governing interactions with healthcare providers, anti-corruption laws, privacy rules and transparency laws. In order to maintain compliance with these laws and requirements, we must continually keep abreast of any changes or developments to be able to integrate compliance protocols into the development and regulatory documentation of our products. Failure to maintain compliance could result in substantial penalties to us and harm our business.

Laws and ethical rules governing interactions with healthcare providers. The Medicare and Medicaid "anti-kickback" laws, and similar state laws, prohibit soliciting, offering, paying or accepting any payments or other remuneration that is intended to induce any individual or entity to either refer patients to or purchase, lease or order, or arrange for or recommend the purchase, lease or order of, healthcare products or services for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid. Such laws impact our sales, marketing and other promotional activities by reducing the types of financial arrangements we may have with our customers, potential customers, marketing consultants and other service providers. They particularly impact how we structure our sales offerings, including discount practices, customer support, product loans, education and training programs, physician consulting, research grants and other service arrangements. Many of these laws are broadly drafted and are open to a variety of interpretations, making it difficult to determine with any certainty whether certain arrangements violate such laws, even if statutory safe harbors are available.

In addition to such anti-kickback laws, federal and state "false claims" laws generally prohibit the knowing filing or causing the filing of a false claim or the knowing use of false statements to obtain payment from government payors. Although we do not submit claims directly to payors, manufacturers can be held liable under these laws if they are deemed to "cause" the submission of false or fraudulent claims by providing inaccurate billing or coding information to customers, or through certain other activities, including promoting products for uses or indications that are not approved by the FDA.

We are also subject to federal and state physician self-referral laws. The federal Ethics in Patient Referrals Act of 1989, commonly known as the Stark Law, 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 any good or service furnished pursuant to an unlawful referral. Various states have corollary laws to the Stark Law, including laws that require physicians to disclose any financial interest they may have with a healthcare provider to their patients when referring patients to that provider. Both the scope and exceptions for such laws vary from state to state.

If our past or present operations are found to be in violation of any of these "anti-kickback," "false claims," "self-referral" or other similar laws in foreign jurisdictions, we may be subject to the applicable penalty associated with the violation, which may include significant civil and criminal penalties, damages, fines, imprisonment and exclusion from healthcare 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.

Anti-corruption laws. We are also subject to laws regarding the conduct of business overseas, such as the FCPA, the U.K. Bribery Act of 2010, the Brazil Clean Companies Act, and other similar laws in foreign countries in which we operate. The FCPA prohibits the provision of illegal or improper inducements to foreign government officials in connection with the obtaining of business overseas. Becoming familiar with and implementing the infrastructure necessary to ensure that we and our distributors comply with such laws, rules and regulations and mitigate and protect against corruption risks could be quite costly, and there can be no assurance that any policies and procedures we do implement will protect us against liability under the FCPA or related laws for actions taken by our employees, executive officers, distributors, agents and other intermediaries with respect to our business. Violations of the FCPA or other similar laws by us or any of our employees, executive officers, distributors, agents or other intermediaries could subject us or the individuals involved to criminal or civil liability, cause a loss of reputation in the market, and materially harm our business.

Laws protecting patient health information. 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 ("HHS") has promulgated patient privacy rules under the 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. The HIPAA privacy standard was amended by the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009. Although we are not a "covered entity" under HIPAA, we are considered a "business associate" of certain covered entities and, as such, we are directly subject to HIPAA, including its enforcement scheme and inspection requirements, and are required to implement policies, procedures as well as 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 in compliance with HIPAA or other laws could subject us to civil and criminal liability to the government and civil liability to the covered entity, could result in adverse publicity, and could harm our business and impair our ability to attract new customers.

Transparency laws. The Sunshine Act, which was enacted by Congress as part of the Patient Protection and Affordable Care Act on December 14, 2011, requires each applicable manufacturer, which includes medical device companies such as Accuray, to track and report to the federal government on an annual basis all payments and other transfers of value from such applicable manufacturer to U.S. licensed physicians and teaching hospitals as well as physician ownership of such applicable manufacturer's equity, in each case subject to certain statutory exceptions. Furthermore, on October 25, 2018, President Trump signed into law the "Substance Use-Disorder Prevention that Promoted Opioid Recovery and Treatment for Patients and Communities Act" which in part (under a provision entitled "Fighting the Opioid Epidemic with Sunshine") extends the reporting and transparency requirements for physicians in the Physician Payments Sunshine Act to physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives (with reporting requirements going into effect in 2022 for payments made in 2021). Such data will be made available by the government on a publicly searchable website. Failure to comply with the data collection and reporting obligations imposed by the Sunshine Act can result in civil monetary penalties ranging from $1,000 to $10,000 for each payment or other transfer of value that is not reported (up to a maximum of $150,000 per reporting period) and from $10,000 to $100,000 for each knowing failure to report (up to a maximum of $1 million per reporting period). In addition, we are subject to similar state and foreign laws related to the tracking and reporting of payments and other transfers of value to healthcare professionals, the violation of which could, among other things, result in civil monetary penalties and adversely impact our reputation and business.

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 EU, 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. In addition, the EU's Medical Device Regulation ("MDR"), which replaced the existing Medical Device Directive, became effective in May 2021. The MDR establishes new requirements and oversight for maintaining the CE mark. The official guidance continues to be published for the implementation of these requirements and the number of Notified Bodies are still limited. There may be variability in review timeframes and requirements as both manufacturers and authorities navigate these new requirements. In addition, the EU and Switzerland failed to establish a Mutual Recognition Agreement ("MRA") for medical devices to include Switzerland within the MDR and as a result, Switzerland has initiated its own medical device regulation similar to the EU MDR, which will require additional registrations for economic operators and products within Switzerland for our devices.

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 ("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 around the world 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. Although we follow procedures intended to comply with existing environmental laws and regulations, risk of accidental contamination or injury can never be fully eliminated. In the event of an accident, state or federal or other applicable authorities may curtail our use of these materials and interrupt our business operations. In addition, future changes in these laws and regulations could also increase our costs of doing business. We must continually keep abreast of these standards and requirements and integrate our compliance into the development and regulatory documentation for our products. Failure to meet these standards could limit our ability to market our products in those regions that require compliance to such standards. For example, the European Union has adopted directives that may lead to restrictions on the use of certain hazardous substances or other regulated substances in some of our products sold there, unless such products are eligible for an exemption. While we believe that certain of our products are exempt, there can be no guarantee that such determination would not be challenged or that the regulations would not change in a way that would subject our products to such regulation. These directives, along with other laws and regulations that may be adopted by other countries, could increase our operating costs in order to maintain access to certain markets, which could adversely affect our business.

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

In March 2010, the Patient Protection and Affordable Care Act, as amended by Health Care and Education Reconciliation Act (collectively, the "ACA") were signed into law. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA. In particular, on December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On June 18, 2021, the United States Supreme Court upheld the ACA, holding that the individuals who brought the lawsuit did not have standing to challenge the law. It is unclear how this decision and the decisions of the current administration will impact the ACA and our business. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

The ACA includes a large number of health related provisions, 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. The laws also include a decrease in the annual rate of inflation for Medicare payments to hospitals and the establishment of an independent payment advisory board to suggest methods of reducing the rate of growth in Medicare spending. We do not yet know the full impact that the ACA will have on our business. The expansion in the government's role in the U.S. healthcare industry may result in decreased profits to us, lower reimbursement by third-party payors for our products, or reduced volume of medical procedures conducted with our products, all of which could have a material adverse effect on our business, financial condition and results of operations. The Tax Act was signed into law in December 2017, which, among other things, removed penalties for not complying with the individual mandate to carry health insurance. However, with the new administration, the federal government may take further action regarding the ACA, including, but not limited to, reversing the changes implemented by the prior administration and expanding access to coverage under the ACA. We cannot predict the ultimate content, timing or effect of any healthcare reform legislation or the impact of potential legislation on us.

In addition, since the adoption of the ACA, other legislation designed to keep federal healthcare costs down has been proposed or passed. For example, under the sequestration required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012, Medicare payments for all items and services under Parts A and B incurred on or after April 1, 2013 have been reduced by up to 2%. Future federal legislation may impose further 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.

Since the enactment of the ACA, CMS continues its efforts to move away from fee for service payments for furnishing items and services in Medicare. On September 18, 2020 CMS released the Medicare Program; Specialty Care Models to Improve Quality of Care and Reduce Expenditures final rule. Within this rule, CMS finalized the implementation of a Radiation Oncology Alternative Payment Model (RO-APM). The RO-APM is a mandatory model that is intended to test whether changing the from a traditional volume-based fee-for-service payment model to a prospective, site neutral, modality agnostic, episode-based payment model will reduce Medicare expenditures while preserving or enhancing the quality of care. This model requires participation from 30% of all eligible Medicare fee-for-service radiation therapy episodes and, with a few minor exceptions, radiotherapy providers who are selected by CMS will be required to participate in this model. The RO-APM has a five-year model performance period that begins on January 1, 2022 and runs through December 31, 2026. It is unclear what impact, if any, the RO-APM and other government payer initiatives will have on our business and operating results, but uncertainties surrounding the new payment model or other initiatives could pause or otherwise delay the purchase of our products by our customers and any resulting decrease in reimbursement to our customers may result in reduced demand for our services.

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, including any potential repeal or amendment of the ACA, 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. 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.

Regulations related to "conflict minerals" may force us to incur additional expenses, may result in damage to our business reputation and may adversely impact our ability to conduct our business.

The Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules promulgated by the SEC under such act require companies, including Accuray, to disclose the existence in their products of certain metals, known as "conflict minerals," which are metals mined from the Democratic Republic of the Congo and adjoining countries. These rules require investigative efforts, which has and will continue to cause us to incur associated costs, could adversely affect the sourcing, availability and pricing of minerals used in our products and may cause reputational harm if we determine that certain of our components contain such conflict minerals or if we are unable to alter our processes or sources of supply to avoid using such materials, all of which could adversely impact sales of our products and results of operations.

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 stock market in general has recently experienced relatively large price and volume fluctuations, particularly in response to new news on the COVID-19 pandemic. In addition, the trading prices of the stock of 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. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock. 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:

- impacts to our business, operations or financial condition caused by concerns in connection with the COVID-19 pandemic as well as the related public and private sector responses to the pandemic;
- fiscal and monetary stimulus measures to counteract the impact of the COVID-19 pandemic;
- regulatory developments related to manufacturing, marketing or sale of the CyberKnife or TomoTherapy platform;
- political or social uncertainties;
- changes in product pricing policies;
- variations in our operating results, as well as costs and expenditures;
- announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- changes in analysts' estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' and our own estimates;
- recruitment or departure of key personnel;
- the performance of our competitors and investor perception of the markets and industries in which we compete;
- announcement of strategic transactions or capital raising activities; and
- market conditions in our industry, the industries of our customers and the economy as a whole.

The sale of material amounts of common stock by our stockholders could encourage short sales by third parties and depress the price of our common stock.

The downward pressure on our stock price caused by the sale of a significant number of shares of our common stock, or the perception that such sales could occur, by any of our significant stockholders could cause our stock price to decline, thus allowing short sellers of our stock an opportunity to take advantage of any decrease in the value of our stock. The presence of short sellers in our common stock may further depress the price of our common stock.

Future issuances of shares of our common stock could dilute the ownership interests of our stockholders.

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 options or for other reasons.

In August 2017, we issued $85.0 million aggregate principal amount of our 3.75% Convertible Notes due 2022 and in May 2021, we issued $100.0 million aggregate principal amount of our 3.75% Convertible Notes due 2026. $97.1 million aggregate principal amount of the 3.75% Convertible Notes due 2026 were issued to certain holders of the 3.75% Convertible Notes due 2022 in exchange for approximately $82.1 million aggregate principal amount of 3.75% Convertible Notes due 2022 and $2.9 million aggregate principal amount of the 3.75% Convertible Notes due 2026 were issued to certain other qualified new investors for cash. To the extent we issue common stock upon conversion of any outstanding convertible notes, that conversion would dilute the ownership interests of our stockholders.

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, as applicable, will be entitled to convert such notes at any time during specified periods at their option. If one or more holders elect to convert such 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 such 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 such notes as a current rather than long-term liability, which could result in a material reduction of our net working capital.

Provisions in the indenture for the Notes, the credit agreement for our New Credit Facilities, 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.

A change of control will also trigger an event of default under the New Credit Facilities. If an event of default occurs, the agent for the lenders under the New Credit Facilities may, at its discretion, suspend or terminate any of the lenders' loan obligations thereunder and/or declare all or any portion of the loan then-outstanding under the New Credit Facilities, including all accrued but unpaid interest thereon, to be accelerated and immediately due and payable.

Furthermore, if a "fundamental change" (as such term is defined in the applicable indenture of 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 convertible notes. A "fundamental change" generally occurs when there is a change in control of Accuray (acquisition of 50% or more of our voting stock, liquidation or sale of Accuray not for stock in another publicly traded company) or trading of our stock is terminated. In the event of a "make-whole fundamental change" (as such term is defined in the applicable indenture of the Notes), we may also be required to increase the conversion rate applicable to the Notes surrendered for conversion in connection with such make-whole fundamental change. A "make-whole fundamental change" is generally a sale of Accuray not for stock in another publicly traded company. In addition, the applicable indentures 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.

General Risks

Our operations are vulnerable to interruption or loss because of natural disasters, global or regional health pandemics or epidemics, terrorist acts and other events beyond our control, which would adversely affect our business.

We have facilities in countries around the world, including two manufacturing facilities, each of which is equipped to manufacture unique components of our products. Our manufacturing facilities are located in Madison, Wisconsin, and Chengdu, China. We do not maintain backup manufacturing facilities for any of our manufacturing `facilities or for our IT 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 California, which has experienced major earthquakes and fires 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. In addition, China has suffered health epidemics related to the outbreak of COVID-19 (including resurgences of COVID-19), avian influenza and severe acute respiratory syndrome, which could adversely affect our operations in China, including our manufacturing operations in Chengdu, as well as the operations of the JV and those of our customers. Furthermore, the COVID-19 pandemic has spread widely around the world, including in locations where we have facilities and operations. Unexpected events at any of our facilities or otherwise, including as a result of responses to epidemics or pandemics; fires or explosions; natural disasters, such as hurricanes, floods, tornados and earthquakes; war or terrorist activities; unplanned outages; supply disruptions; and failures of equipment or systems, including telecommunications systems, or the failure to take adequate steps to mitigate the likelihood or potential impact of such events, could significantly disrupt our operations, delay or prevent product manufacturing 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 particular, telecommunication system failures or disruptions could significantly disrupt our operations as a result of our increase remote work arrangements due to the COVID-19 pandemic. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil or an epidemic outbreak could have a negative effect on our operations and the operations of our suppliers and customers and the ability to travel, which could harm our business, financial condition and results of operations.

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

We prepare our financial statements to conform to United States 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, upon adoption of ASC 606, we now recognize system revenue upon transfer of control, which is generally at time of delivery. Under the previous accounting guidance, we recognized system revenue upon acceptance when and if we have installation responsibilities. If circumstances change over time or interpretation of the revenue recognition rules change, we could be required to adjust the timing of recognizing revenue and our financial results could suffer.

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

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

Facilities

We currently lease approximately 124,000 square feet of product development and administrative space in two buildings in Sunnyvale, California, as follows:

- A headquarters building that is approximately 74,000 square feet, which is leased to us until December 2023. We have the right to renew the lease term of our headquarters office building for two five-year terms upon prior written notice and the fulfillment of certain conditions; and
- A research and development facility totaling approximately 50,000 square feet, which is leased to us until December 2023.

We also lease approximately 159,000 square feet of product development, manufacturing, administrative and warehouse space in four buildings in Madison, Wisconsin, as follows:

- An office building totaling approximately 61,000 square feet, which is leased to us until June 2025;
- A manufacturing facility totaling approximately 56,000 square feet, which is leased to us until June 2025; and
- Warehouse and office space in two buildings totaling approximately 41,000 square feet, which are leased to us through various dates until April 2023.

Our wholly owned subsidiary, Accuray International Sàrl, leases one office building that consists of approximately 21,000 square feet of administrative space in Morges, Switzerland, which are leased to Accuray International until December 2024.

In addition, our wholly-owned subsidiary, Accuray Accelerator Technology Company Limited, leases approximately 42,000 square feet of space in a manufacturing facility in Chengdu, China until July 2023.

We, directly or through our subsidiaries, also maintain offices in: Pittsburgh, Pennsylvania; Durham, North Carolina; Solon, Ohio; China; Hong Kong; Japan; Spain; India; Russia; Germany; Brazil; and the United Arab Emirates.

We believe our current facilities are adequate to meet our current needs, but additional space, including additional radiation shielded areas in which systems can be assembled and tested, may be required in the future to accommodate anticipated increases in manufacturing needs.

Item 3. LEGAL PROCEEDINGS

Refer to Note 9, *Commitments and Contingencies*, to the Consolidated Financial Statements 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 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Stock Information

Our common stock is traded on the Nasdaq Global Select Market under the symbol "ARAY."

We have never paid cash dividends on our common stock. Our Board of Directors intends to use any future earnings to support operations and reinvest in the growth and development of our business. There are no current plans to pay cash dividends to common stockholders in the foreseeable future.

As of August 12, 2021, there were 183 registered stockholders of record of our common stock. Because many of our shares of common stock are held by brokers or other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial stockholders and believe the number of registered stockholders of record underestimates our total number of stockholders.

In April 2021, we granted 53,191 shares of restricted stock units ("RSUs") to an employee, with a grant-date fair value of $4.70 per restricted stock unit. Each restricted stock unit represents the right to receive one share of our common stock upon vesting. One fourth of the aggregate RSUs vest annually over a period of four years. We did not receive any proceeds from this issuance. The issuance of such securities was exempt from registration under the Securities Act, in reliance upon Section 4(a)(2) of the Securities Act, for transactions by an issuer not involving a public offering. Other than as noted above and as previously reported to the Securities and Exchange Commission (SEC) on our Current Reports on Form 8-K, there were no sales of unregistered equity securities by us during the year ended June 30, 2021.

Issuer Purchases of Equity Securities

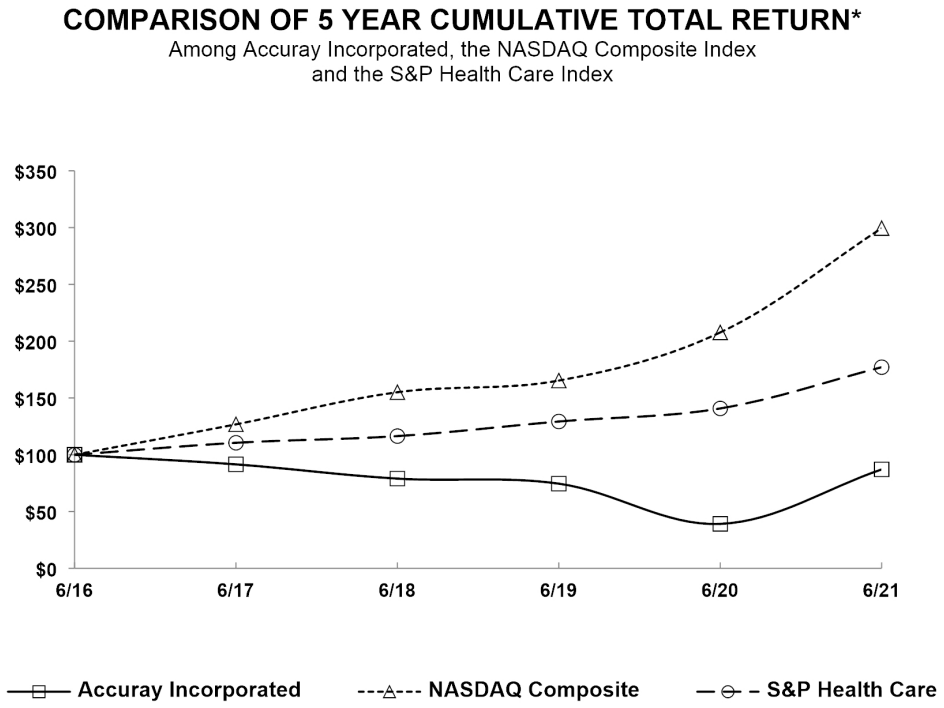
The following table presents information with respect to the Company's repurchases of common stock during the quarter ended June 30, 2021.

Period	Total Number of Shares Purchased (in millions)(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs (in millions)(1)	Approximate Dollar Value of Shares that May Yet Be Purchased Under Publicly Announced Programs (in millions)(1)
April 1 - 30	—	$ —	—	—
May 1 - 31	3.11	$ 4.54	3.11	—
June 1 - 30	—	$ —	—	—
Total	3.11	$ 4.54	3.11	—

(1) On May 5, 2021, the Board of Directors authorized a repurchase of an aggregate amount of our common stock not to exceed $18 million. On May 7, 2021, we completed a repurchase of 3,108,369 shares of our common stock for an aggregate amount of $14.1 million in privately negotiated transactions with a financial intermediary. No further purchases of common stock is intended to be made under this authorization.

Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on our common stock between June 30, 2016 and June 30, 2021, with the cumulative total return of (i) the S&P Healthcare Index and (ii) the Nasdaq Composite Index, over the same period. This graph assumes the investment of $100.00 on June 30, 2016 in our common stock, the S&P Healthcare Index and the Nasdaq Composite Index, and assumes the reinvestment of dividends, if any.



The comparisons shown in the graph above are based upon historical data. We caution that the stock price performance shown in the graph above is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock.

Item 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with, and are qualified by reference to, our consolidated financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this Form 10-K. The consolidated statements of operations for the years ended June 30, 2021, 2020 and 2019, and the consolidated balance sheet data at June 30, 2021 and 2020 are derived from, and are qualified by reference to, the consolidated financial statements that have been audited by our independent registered public accounting firm, which are included elsewhere in this Form 10-K. The consolidated statements of operations data for the years ended June 30, 2018 and 2017 and the consolidated balance sheet data at June 30, 2019, 2018 and 2017 is derived from our audited consolidated financial statements not included in this Form 10-K.

	Years Ended June 30,				
	2021	2020	2019	2018	2017
	(in thousands, except per share data)				
Consolidated Statements of Operations Data:					
Net revenue	$ 396,289	$ 382,928	$ 418,785	$ 404,897	$ 383,414
Cost of revenue	236,782	233,207	256,134	243,202	242,073
Gross profit	159,507	149,721	162,651	161,695	141,341
Operating expenses:					
Research and development	52,729	49,784	56,493	57,251	49,921
Selling and marketing	42,820	47,254	55,998	60,105	57,477
General and administrative	41,723	40,144	49,577	48,136	43,766
Total operating expenses	137,272	137,182	162,068	165,492	151,164
Income (loss) from operations	22,235	12,539	583	(3,797)	(9,823)
Income (loss) on equity method investment	872	(149)	—	—	—
Other expense, net	(27,666)	(6,700)	(14,927)	(19,224)	(18,718)
Income (Loss) before provision for income taxes	(4,559)	5,690	(14,344)	(23,021)	(28,541)
Provision for income taxes	1,752	1,863	2,086	878	1,038
Net income (loss)	(6,311)	3,827	(16,430)	(23,899)	(29,579)
Income (loss) per share					
Basic	$ (0.07)	$ 0.04	$ (0.19)	$ (0.28)	$ (0.36)
Diluted	$ (0.07)	$ 0.04	$ (0.19)	$ (0.28)	$ (0.36)
Weighted average common shares used in computing net income (loss) per share					
Basic	92,031	89,874	87,465	84,893	82,495
Diluted	92,031	90,623	87,465	84,893	82,495

	As of June 30,				
	2021	2020	2019	2018	2017
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 116,369	$ 107,577	$ 76,798	$ 83,083	$ 72,084
Investments	$ —	$ —	$ -	$ -	$ 23,909
Working capital	$ 160,414	$ 175,215	$ 151,894	$ 114,723	$ 24,511
Total assets	$ 480,098	$ 490,927	$ 438,181	$ 378,727	$ 406,464
Long-term debt	$ 170,007	$ 189,307	$ 159,844	$ 131,077	$ 51,548
Total stockholders' equity	$ 68,840	$ 63,635	$ 49,871	$ 48,632	$ 46,533

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion of our consolidated financial condition and results of operations in conjunction with the financial statements and the notes thereto included elsewhere in this report. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this report on Form 10-K, particularly in "Risk Factors." See "Special Note Regarding Forward-Looking Statements."

Overview

Company

We are a radiation therapy company that develops, manufactures, sells and supports market-changing solutions that are designed to deliver radiation treatments for even the most complex cases, while making commonly treatable cases even more straightforward, to meet the full spectrum of patient needs. We believe in comparison to conventional linear accelerators, the company's treatment delivery, planning, and data management solutions provide better accuracy, flexibility, and control; fewer treatments with shorter treatment times; and the technology to expand beyond cancer, making it easier for clinical teams around the world to provide treatments that help patients get back to living their lives, faster.

Our innovative technologies, the CyberKnife® and TomoTherapy® platforms, including the Radixact® System, our next generation TomoTherapy platform, are designed to deliver advanced treatments, including stereotactic radiosurgery (SRS), stereotactic body radiation therapy (SBRT), intensity modulated radiation therapy (IMRT), image-guided radiation therapy (IGRT), and adaptive radiation therapy (ART). The CyberKnife and TomoTherapy platforms have complementary clinical applications with the same goal: to empower our customers to deliver the most precise and accurate treatments while still minimizing dose to healthy tissue, helping to reduce the risk of side effects that may impact patients' quality of life. Each of these systems serves patient populations treated by the same medical specialty, radiation oncology, with advanced capabilities. The CyberKnife platform is also used by neuro-radiosurgeons to treat patients with tumors in the brain and neurologic disorders. In addition to these platforms, we also provide services, which include post-contract customer support (warranty period services and post warranty services), installation services, training, and other professional services.

The CyberKnife Platform

The CyberKnife platform has evolved over the years reflecting innovation in its hardware and software. The platform is comprised of the only full-body stereotactic radiosurgery (SRS) and stereotactic body radiation therapy (SBRT) robotic systems on the market - including the CyberKnife M6™ and S7™ Systems. These systems have the option of fixed collimator, Iris™ Variable Aperture Collimator and the InCise™ Multileaf Collimator (MLC). With the InCise MLC, clinicians can deliver the same precise SRS and SBRT treatments they have come to expect with the CyberKnife System, faster and for a wider range of tumor types than prior configurations of the CyberKnife System. The use of SRS and SBRT with the CyberKnife platform to treat tumors throughout the body has grown significantly in recent years. SRS and SBRT is performed on an outpatient basis in a limited number of treatment sessions - typically 1-5 fractions. It enables the treatment of patients who might not otherwise be treated with radiation, who may not be good candidates for surgery, or who desire non-surgical treatments.

In 2018, we introduced the new release of our Precision® Treatment Planning System (TPS) with the VOLO Optimizer software upgrade for the CyberKnife M6 System, enabling customers to significantly improve operational efficiency by reducing both the time to create high quality treatment plans and the time it takes to deliver patient treatments. The next-generation TPS with the optimizer facilitates the development of clinically optimal treatment plans up to 90 percent faster than before and the delivery of the treatment up to an estimated 50 percent faster than before the availability of the new software, allowing CyberKnife treatments to typically be performed in 15 to 30 minutes.

In June 2020, we launched the CyberKnife S7 System, an innovative device combining speed, advanced precision, and real-time artificial intelligence-driven motion tracking and synchronization treatment delivery for all stereotactic radiosurgery (SRS) and stereotactic body radiation therapy (SBRT) treatments in as little as 15 minutes. The CyberKnife S7 System is the next-generation CyberKnife platform, a robotic, non-invasive radiation therapy device capable of treating cancerous and benign tumors throughout the body, as well as neurologic disorders. The CyberKnife S7 System, with Synchrony® Motion Synchronization and Real-Time Adaptive Radiotherapy Technology and the VOLO™ Optimizer, facilitates the delivery of accurate, sub-millimeter, (ultra) hypofractionated treatments to tumors throughout the body, and even to targets that move.

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

- Continued adoption of our CyberKnife platform, including the CyberKnife M6 System and CyberKnife S7 System, in markets where they are available;
- Greater awareness among doctors and patients of the benefits of radiosurgery conducted with the CyberKnife platform;
- Continued evolution in clinical studies demonstrating the safety, efficacy and other benefits of using the CyberKnife platform to treat tumors in various parts of the body;
- Change in medical practice leading to utilization of stereotactic body radiosurgery more regularly as an alternative to surgery or other treatments;
- Continued advances in our technology that improve the quality of treatments and ease of use of the CyberKnife platform;
- Receipt of regulatory approvals in various countries which are expected to improve access to radiosurgery with the CyberKnife S7 System in such countries;
- Medical insurance reimbursement policies that cover CyberKnife platform treatments; and
- Our ability to expand sales of CyberKnife M6 and S7 Systems in countries throughout the world where we do not currently sell or have not historically sold a significant number of any CyberKnife platform configurations.

TomoTherapy Platform

The TomoTherapy platform consists of advanced, fully integrated and versatile radiation therapy systems designed to deliver IG-IMRT for the treatment of a wide range of cancer types. The TomoTherapy platform includes the TomoTherapy H Series, with configurations of TomoH®, TomoHD®, and TomoHDA™. Based on a CT scanner platform, the systems provide continuous delivery of radiation from multiple 360 degree rotations around the patient, or delivery from clinician-specified beam angles. These unique features, combined with daily 3D image guidance, enable physicians to deliver highly accurate, individualized dose distributions which precisely conform to the shape of the patient’s tumor while minimizing dose to normal, healthy tissue and the risk of side effects for the patient. The TomoTherapy platform is capable of treating all standard radiation therapy indications including breast, prostate, lung, and head and neck cancers, in addition to complex and novel treatments such as total marrow irradiation. The Radixact® System, the next-generation TomoTherapy platform, includes our integrated Accuray Precision® treatment planning software and iDMS® Data Management System. The Radixact System leverages a unique ring gantry architecture to enable helical image acquisition and dose delivery, enabling precise radiation treatments for more patients, faster, with simpler, more automated workflows.

Our Synchrony Motion Synchronization and Real-Time Adaptive Radiotherapy Technology for the Radixact System adds intrafraction motion synchronization capabilities to the Radixact System, enabling real-time tracking, visualization and correction for tumor motion during treatment, with the goal of improving dose accuracy and treatment times as compared to conventional radiation therapy systems.

Most recently, we received FDA 510(k) clearance, Shonin approval from the Japanese Ministry of Health, Labor and Welfare (MHLW), and CE Mark certification for our uniquely innovative ClearRT™ helical kVCT imaging technology for the Radixact System. ClearRT imaging brings low dose diagnostic-like kVCT imaging quality, the largest imaging field of view available on a radiation delivery system at 50 cm (diameter) by 135 cm (long), and speed, as evidenced by its ability to capture a 1-meter image in only 1 minute. Furthermore, ClearRT helical kVCT imaging can be used directly in the adaptive dose monitoring process, and when required, ClearRT native image sets can be used for new plan creation.

We believe the Radixact System and other TomoTherapy Systems offer clinicians and patients significant benefits over other vendors' radiation therapy systems in the market. We believe our ability to capture more sales will be influenced by a number of factors including the following:

- Continued adoption of our TomoTherapy platform, including the Radixact System, in markets where it is available;
- Greater awareness among doctors and patients of the unique benefits of radiation therapy using the TomoTherapy platform, including its ring gantry architecture that enables treatment delivery from multiple 360 degree rotations around the patient, and ClearRT helical kVCT imaging for the Radixact System, designed to produce exceptional diagnostic-like quality CT images, quickly and cost-effectively;
- Advances in our technology that improve the quality of treatments and ease of use of TomoTherapy platform;
- Greater awareness among doctors of the now-established reliability of TomoTherapy platform; and
- Our ability to expand sales of TomoTherapy platform in countries throughout the world where we do not currently sell or have not historically sold a significant number of any TomoTherapy platform configurations.

Sale of Our Products

Generating revenue from the sale of our platforms is a lengthy process. Selling our platforms, from first contact with a potential customer to a signed sales contract that meets our backlog criteria (as discussed below) varies significantly and generally spans between six months and two years. The length of time between receipt of a signed contract and revenue recognition is generally governed by the time required by the customer to build, renovate or prepare the treatment room for installation of the platform.

In the United States, we primarily market directly to customers, including hospitals and stand-alone treatment facilities, through our sales organization and we also market to customers through sales agents and group purchasing organizations. Outside the United States, we market to customers directly and through distributors and sales agents. In addition to our offices in the United States, we have sales and service offices in Europe, Asia, and South America.

As of June 30, 2021, our systems were named in 74 out of 90 Class A user licenses awarded by the China National Health Commission. The Chinese Ministry of Health requires a tender process following the license awards for all participating end user hospitals prior to being able to take receipt of a Class A device. This tender process defines the transactional terms and conditions related to each hospital's equipment order and does not put us in a competitive bidding situation that would result in changes in the specific device for which the hospital has received the Class A user license. During the year ended June 30, 2021, we delivered Class A devices to China and recognized system revenue related to such devices of approximately $54.2 million in the same period. We currently anticipate system revenue related to the remaining Class A user licenses awarded to date in the next 12 to 18

months. Despite the challenges and uncertainties created by the COVID-19 pandemic in China and around the world, we continue to believe that China remains the world's fastest growing market for radiation oncology systems and the pandemic does not affect the long-term demand for radiotherapy equipment in China.

Joint Venture

In January 2019, our wholly-owned subsidiary, Accuray Asia Limited ("Accuray Asia"), entered into an agreement with CNNC High Energy Equipment (Tianjin) Co., Ltd. (the "CIRC Subsidiary"), a wholly-owned subsidiary of China Isotope & Radiation Corporation, to form a joint venture, CNNC Accuray (Tianjin) Medical Technology Co. Ltd. (the "JV"), to manufacture and sell radiation oncology systems in China. The JV aims to be uniquely positioned to serve China, which we believe is the world's largest growth market for radiation oncology systems. China represents a significantly underserved market for linacs based on the country's population and cancer incidence rates on both an absolute and relative country basis. Accuray Asia has a 49% ownership interest in the JV and the CIRC Subsidiary has a 51% ownership interest in the JV.

In exchange for the 49% equity interest in the JV, we, through Accuray Asia, made in-kind contributions consisting of two full radiation oncology systems from our inventory in the quarter ended December 31, 2019. The investment is reported as an Investment in unconsolidated joint venture on our condensed consolidated balance sheets. We recognized a gain of $13.0 million related to the value of the capital contribution to the JV. This gain was recorded as non-operating, other income for the quarter ended December 31, 2019.

In July 2019, the JV broke ground on its facility based in Tianjin, China, which is expected to serve as headquarters and home of its manufacturing, sales organization and service operations, and also received the Radiation Safety License from the China Ministry of Environmental Protection. This license, along with the license to do business in China and the Medical Device Operating Permit, which were both received in 2019, enables the JV to sell, install and provide further service to our radiation therapy devices in China. The JV manufacturing facility construction was completed in 2020, and Quality Management System certificated with ISO13485 standard. The China made medical device type testing is on going and NMPA submission expected to finish in the fourth calendar quarter of 2021.

With the receipt of the necessary permits and licenses to operate, the JV has begun selling products in China, much like a distributor. In the long term, we anticipate that the JV will manufacture and sell a locally branded "Made in China" radiotherapy device in the Class B license category, which would replace our current offering in that category. We believe this strategy will allow us to best maximize both near and longer-term opportunities in China.

We are applying the equity method of accounting to our ownership interest in the JV as we have the ability to exercise significant influence over the JV but lack controlling financial interest and are not the primary beneficiary. We recognize revenue on sales to the JV in the current period, eliminating a portion of profit to the extent goods sold have not been sold through by the JV to an end customer at the end of each reporting period. We will recognize the 49% proportionate share of the JV income or loss from the JV on a one-quarter lag due to the timing of the availability of the JV's financial records. We deferred $2.1 million and $1.8 million of intra-entity profit margin as of June 30, 2021 and June 30, 2020, respectively. During the year ended June 30, 2021, we recognized $1.8 million of previously deferred intra-entity profit margin from sales and recorded intra-entity profit margin deferral of $2.1 million from sales executed during the period. Our consolidated accumulated deficit includes $0.9 million of accumulated income related to our equity method investment.

As of June 30, 2021, we had a carrying value of $15.9 million in the JV and owned a 49% interest in the entity. Our proportional share of the underlying equity in net assets of the JV was approximately $13.7 million. The difference of $2.2 million, increased by $2.1 million eliminated intra-entity profit, constitutes equity method goodwill of $4.4 million at June 30, 2021, including $0.1 million annual impact of foreign currency exchange gain, and is subject to impairment analysis annually during the quarter ending March 31, 2021. No impairment was identified as of June 30, 2021.

COVID-19 Pandemic

In fiscal year 2020, an outbreak of a novel strain of coronavirus, SARS-CoV-2, which causes coronavirus disease 2019 ("COVID-19") was identified in December 2019 in China and was subsequently recognized as a pandemic by the World Health Organization. The COVID-19 pandemic severely restricted the level of economic activity around the world and while conditions have improved, the pace and degree of recovery varies significantly. In response to this pandemic, governments and private industry have taken preventative or protective actions, such as imposing restrictions on travel and business operations, which has resulted in the temporary or permanent closure of certain businesses, as well as advising or requiring individuals to limit or forego their time outside of their homes. The COVID-19 pandemic has adversely impacted our business operations as well as those of our customers and partners. In addition, across the healthcare industry, resources are being prioritized for the treatment and management of the pandemic and away from non-urgent or elective procedures. Some of our customers, which include hospitals, major academic medical centers, and other related entities, have incurred losses during the COVID-19 pandemic due to significantly reduced patient volume. The public health actions being undertaken to reduce the spread of the virus have created and may continue to create significant disruptions with respect to demand for our products and services; the operating procedures and workflow of our customers, particularly hospitals; our ability to continue to manufacture our products; and the reliability of our supply chain.

Our financial results have also been affected by the COVID-19 pandemic in various ways. The COVID-19 pandemic is adversely impacting the pace at which our backlog converts to revenue in the near-term. This is primarily the result of delays in the timing of deliveries and installations in fiscal 2021 caused by the COVID-19 pandemic, which resulted in a decline to our revenue for the same period. We expect that such delays in deliveries and installations will continue into fiscal 2022, which could have a negative impact on our revenue during those periods. We have also experienced disruptions in our sales as well as declines in deliveries and installations of our products, which has adversely impacted the pace at which our backlog converts to revenue. We have also experienced delays in customer payments and delays in planned installations as a result of changes to and redirection of customer resources to the response to the COVID-19 pandemic and closures of customer facilities. We have also received requests from a few customers to extend payment terms or temporarily suspend service and corresponding payment obligations and while we have only received a small number of requests thus far, there can be no guarantee that more customers will not ask for the same if the effects of the COVID-19 pandemic worsen or continue for an extended period. As a result, we are carefully monitoring the pandemic and the potential length and depth of the resulting economic impact, as well as the timing and extent of an economic recovery, on our financial condition and results of operations. However, given the uncertainty regarding the spread, severity and potential resurgence of COVID-19 and how long the pandemic and associated health measures will last, the related financial impact cannot be reasonably estimated at this time. We expect that the impacts on our customers' business and our business will continue until the pandemic subsides and related public health measures are reduced or eliminated.

We intend to continue to execute on our strategic plans and operational initiatives during the COVID-19 pandemic. However, the extent to which our operations and financial condition are affected by the COVID-19 pandemic, including our ability to execute our business strategies and initiatives in the expected time frame, will largely depend on future developments that cannot be accurately predicted at this time and are uncertain, including new information that may emerge concerning the severity and scope of the COVID-19 pandemic (including whether there is a resurgence or other additional periods of increases or spikes in the number of COVID-19 cases in areas in which we operate), new or additional actions taken to contain COVID-19 or address its impact, the availability and effect of vaccines, the spread of variants, changes in economic consumer behavior and the timing of global recovery and economic normalization, among other uncertainties and other factors identified in Part II, Item 1A "Risk Factors" in this Form 10-K, may result in delays or modifications to these plans and initiatives. Accordingly, management is carefully evaluating the Company's liquidity position, communicating with and monitoring the actions of our customers and suppliers, and reviewing our near-term financial performance as the uncertainty related to the pandemic continues to unfold.

Backlog

As of June 30, 2021, backlog totaled $616.4 million, of which $2.0 million represented upgrades sold through service contracts. As of June 30, 2020, backlog totaled $602.7 million.

In order for the product portion of a system sales agreement to be counted as backlog, it must meet the following criteria:

- The contract is properly executed by both the customer and us. A customer purchase order that incorporates the terms of our contract quote will be considered equivalent to a signed and executed contract. The contract has either cleared all its contingencies or contained no contingencies when signed;
- We have received a minimum deposit or a letter of credit; or the sale is to a customer where a deposit is deemed not necessary or customary (i.e. sale to a government entity, a large hospital, group of hospitals or cancer care group that has sufficient credit, customers with trade-in of existing equipment, sales via tender awards, or indirect channel sales that have signed contracts with end-customers);
- 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 with our customers for the purchase of our CyberKnife or TomoTherapy platforms, including Radixact Systems and related upgrades, we cannot provide assurance that we will convert backlog into recognized revenue due primarily to factors outside of our control. The amount of backlog recognized into revenue is primarily impacted by three items: cancellations, age-outs and foreign currency fluctuations. Orders could be cancelled for reasons including, without limitation, changes in customers' needs or financial condition, changes in government or health insurance reimbursement policies, or changes to regulatory requirements. In addition to cancellations, after 2.5 years, if we have not been able to recognize revenue on a contract, we remove the revenue associated with the contract from backlog and the order is considered aged out. Contracts may age-out for many reasons, including but not limited to, inability of the customer to pay, inability of the customer to adapt their facilities to accommodate our products in a timely manner, or inability to timely obtain licenses necessary for customer facilities or operation of our equipment. Our backlog also includes amounts not denominated in U.S. Dollars and therefore fluctuations in the U.S. Dollar as compared to other currencies will impact revenue. Generally, strengthening of the U.S. Dollar will negatively impact revenue. Backlog is stated at historical foreign currency exchange rates, and revenue is released from backlog at current exchange rates, with any difference recorded as a backlog adjustment.

The COVID-19 pandemic has adversely impacted the pace of new orders and the pace at which our backlog converts to revenue in the near-term and we expect this to continue. Although the extent to which the COVID-19 pandemic will impact individual markets could vary based on a number of factors, we have seen and expect to continue to see a higher than normal level of age-outs as a result.

A summary of gross orders, net orders, and order backlog is as follows (in thousands):

	Years Ended June 30,		
	2021	2020	2019
Gross orders	$ 325,929	$ 377,295	$ 342,321
Net age-outs	(122,132)	(81,073)	(95,463)
Cancellations	(15,119)	(13,939)	(25,012)
Currency impacts and other	3,203	(1,746)	(3,583)
Net orders	$ 191,881	$ 280,537	$ 218,263
Order backlog at the end of the period	$ 616,399	$ 602,713	$ 495,627

Gross Orders

Gross orders are defined as the sum of new orders recorded during the period adjusted for any revisions to existing orders during the period.

Gross orders decreased by $51.4 million for the year ended June 30, 2021, as compared to the year ended June 30, 2020. This was primarily due to a decline in China Class A system orders as the prior year order volume reflected significant pent-up demand from our end users and distributor, which was triggered by the announcement of the China Class A system quotas back in 2018. In addition, gross order activity during the year ended June 30, 2021 was adversely impacted by the COVID-19 pandemic, particularly in the Americas region. Accordingly, TomoTherapy platform order and upgrades order volume decreased by $48.3 million and $4.1 million, respectively, as compared to the prior year. CyberKnife platform orders decreased by $5.9 million while upgrades increased by $1.4 million. The decrease in CyberKnife platform orders was primarily due to the normalization of China Class A system orders this fiscal year as compared to prior fiscal year where we experienced higher volumes of orders due to significant pent-up demand.

Gross orders increased by $35.0 million for the year ended June 30, 2020, as compared to the year ended June 30, 2019. This was primarily a result of an increase of $32.1 million in new system order volume compared to the same prior year period, primarily related to a $31.1 million increase of TomoTherapy System orders, a $1.0 million increase in CyberKnife System orders and an increase of $2.9 million in upgrade orders and other amendments to the terms of our contracts as compared to the same prior year period.

Net Orders

Net orders are defined as gross orders less cancellations, age-outs, foreign exchange and other adjustments during the period.

Net orders decreased by $88.7 million for the year ended June 30, 2021, as compared to the year ended June 30, 2020, resulting from a decrease of gross orders of $51.4 million, an increase in age-outs of $47.2 million, an increase in cancellations of $1.2 million, offset by an increase in age-ins of $6.1 million and a favorable impact of foreign currency exchange rates of $4.9 million.

- The age-outs for the year ended June 30, 2021 were $122.1 million. There were $6.1 million of age-ins. Age-ins represent orders that previously aged-out but have been recognized as revenue in the current period, compared to $81.1 million of age-outs and $20.5 million of age-ins in the same period last fiscal year.

- There were $15.1 million of cancellations in year ended June 30, 2021 as compared to $13.9 million of cancellations in the year ended June 30, 2020. Cancellations are outside of our control and are difficult to forecast; however, we continue to work closely with our customers to minimize the impact of cancellations on our business.

- Foreign currency impacts and other adjustments increased net orders by $3.2 million for the year ended June 30, 2021 compared to a decrease in net orders by $1.7 million for the year ended June 30, 2020.

Net orders increased by $62.3 million for the year ended June 30, 2020, as compared to the year ended June 30, 2019, resulting from an increase in gross orders of $35.0 million, decreased net age-outs of $14.4 million and cancellations of $11.1 million, in addition to favorable impact of foreign currency exchange of $1.8 million as compared to same to the same prior year period.

- The net age-outs for the year ended June 30, 2020 were $81.1 million. There were $20.5 million age-ins, which represent orders that previously aged-out but have been taken to revenue in the current period, compared to $95.5 million of age-outs and $12.0 million of age-ins for the year ended June 30, 2019. Age-ins offset the gross amount of age-outs in a particular period.

- There were $13.9 million and $25.0 million in cancellations in the year ended June 30, 2020 and June 30, 2019, respectively. Cancellations are outside of our control and are difficult to forecast; however, we continue to work closely with our customers to minimize the impact of cancellations on our business. Additionally, there were $4.1 million cancellations recorded in fiscal year 2020 related to cancellations that occurred in fiscal 2019.

- Other adjustments and foreign currency impacts decreased net orders by $1.7 million and by $3.6 million for the year ended June 30, 2020 and June 30, 2019, respectively.

In recent years, the percentage of gross orders received from our distribution partners in the international markets represented 82%, 76%, and 83% of gross orders for fiscal year ended June 30, 2021, 2020 and 2019, respectively. We anticipate that distributor orders from international markets will continue to represent a significant portion of our gross orders in the foreseeable future. International orders are affected by foreign currency fluctuation as well as government programs that stimulate the purchase of healthcare products, both of which could affect the demand for our products and timing of orders from period to period. In addition, our order-to-revenue conversion cycle for international distributor orders has been generally longer compared to that of direct channel sales and could cause fluctuations in our age-outs from period to period.

Results of Operations

Fiscal 2021 results compared to 2020 (in thousands, except percentages)

	Years Ended June 30,					
	2021		2020		change	
(Dollars in thousands)	Amount	%(*)	Amount	%(*)	$	%
Products	$ 176,647	45%	$ 167,302	44%	$ 9,345	6%
Services	219,642	55%	215,626	56%	4,016	2%
Net revenue (a)	$ 396,289	100%	$ 382,928	100%	$ 13,361	3%
Gross profit	$ 159,507	40%	$ 149,721	39%	$ 9,786	7%
Products gross profit	74,547	42%	71,420	43%	3,127	4%
Services gross profit	84,960	39%	78,301	36%	6,659	9%
Research and development expenses	52,729	13%	49,784	13%	2,945	6%
Selling and marketing expenses	42,820	11%	47,254	12%	(4,434)	(9)%
General and administrative expenses	41,723	11%	40,144	10%	1,579	4%
(Gain) loss on equity method investment	(872)	(0)%	149	0%	(1,021)	(685)%
Other expense, net	27,666	7%	6,700	2%	20,966	313%
Provision for income taxes	1,752	—%	1,863	—%	(111)	(6)%
Net income (loss)	$ (6,311)	(2)%	$ 3,827	1%	(10,138)	(265)%

(*) Expressed as a percentage of total net revenue, except for product and services gross profits which are expressed as a percentage of related product and services revenue.

(a) Includes sales to the JV, an equity method investment of $24,393 and $19,054 for fiscal year ended June 30, 2021 and 2020, respectively. See Note 13.

Net revenue

Product Net Revenue

Product net revenue increased by $9.3 million for the year ended June 30, 2021 or 6%, as compared to the year ended June 30, 2020, primarily due to an increase in unit volume sales coupled with an increase in system average product revenue of $18.8 million. The increase is driven by an increase in revenue from China, offset by a unit volume decline in the Americas, EMEA and Japan regions partly as a result of the impact of COVID-19 pandemic on revenue conversion timing with our customers in those regions and a decrease in system upgrades of $9.5 million due to the timing of release of ClearRT that was anticipated by customers during the fourth quarter of fiscal 2021.

Service Net Revenue

Service net revenue increased by $4.0 million, or 2%, as compared to the year ended June 30, 2020, primarily due to an increase in service contract revenue of $2.8 million, a reduced cost of service of $2.6 million, and an increase in upgrade and installation revenue of $1.8 million, offset by a decrease in training revenue and revenue from service parts.

Net revenue by geographic region, based on the shipping location of our customer, is as follows (in thousands, except percentages):

	Years Ended June 30,	
	2021	2020
Net revenue	$ 396,289	$ 382,928
Americas	27%	34%
Europe, Middle East, India and Africa	31%	31%
Asia Pacific, excluding Japan and China	7%	8%
Japan	16%	19%
China	20%	8%

Gross profit

The overall gross profit for the year ended June 30, 2021 increased by $9.8 million, or 7%, as compared to the year ended June 30, 2020, due to an increase in service gross profit of $6.7 million, or 9%, driven by an increase in service contract revenue of $4.0 million including, upgrades and installation services, from an increase in the number of installed systems, coupled with a reduced cost of service of $2.6 million and an increase in product gross profit of $3.1 million, or 4%, which was driven by higher revenue from system unit sales volume coupled with an increase in system average product revenue.

Research and development expenses

Research and development expenses increased by $2.9 million, or 6%, for the year ended June 30, 2021, as compared to the year ended June 30, 2020. The increase was driven by an increase of $2.5 million in compensation and employee benefits expenses mainly due to reinstatement of bonuses to employees in fiscal year 2021, which were suspended in fiscal year 2020 due to the COVID-19 pandemic and an increase of $2.2 million in outside services offset by a decrease of $0.7 million in travel expenses due to decreased travel as a result of travel restrictions in connection with the COVID-19 pandemic and a decrease of $0.5 million in facilities expenses.

Selling and marketing expenses

Selling and marketing expenses decreased $4.4 million, or 9%, for the year ended June 30, 2021, as compared to the year ended June 30, 2020. The decrease was primarily driven by a decrease of $3.0 million due to the lower cost of key trade shows that were held virtually because of the COVID-19 pandemic, a decrease of $2.0 million in travel expenses, a decrease of $0.9 million in marketing promotion and materials and $0.2 million lower consulting expense, offset by an increase of $1.7 million in compensation and employee benefits mainly due to the reinstatement of bonuses to employees in fiscal year 2021, which were suspended in fiscal year 2020 due to the COVID-19 pandemic.

General and administrative expenses

General and administrative expenses increased by $1.6 million, or 4%, for the year ended June 30, 2021, as compared to the year ended June 30, 2020. The increase was primarily due to an increase of $2.6 million in compensation and employee benefits mainly due to the reinstatement of bonuses to employees in fiscal year 2021, which were suspended in fiscal year 2020 due to the COVID-19 pandemic, and an increase of $1.7 million this fiscal year compared to prior fiscal year due to the conclusion of a foreign indirect tax audit in fiscal year 2020 offset by a decrease in expense for allowance for credit losses of $1.6 million and a decrease in outside services and consulting of $1.2 million.

Income on equity method investment, net

Income (loss) on equity method investment was an income of $0.9 million as compared to a loss of $0.1 million during the year ended June 30, 2020.

Other expense, net

Other expense, net increased by $21.0 million for the year ended June 30, 2021, as compared to the year ended June 30, 2020. The increase was primarily due to the non-cash gain of $13.0 million related to the value of the Accuray systems contributed to the JV in exchange for 49% equity interest that was recorded in fiscal year 2020, an increase of $5.7 million due to loss on extinguishment of debt and a $4.3 million due to loss on the exchange of our 3.75% Convertible Notes due 2022 that was treated as an extinguishment of old notes. The impact of these items was offset by an increase of $0.4 million in net foreign currency exchange gain, a decrease of $1.2 million in interest expense and a $0.2 million payment received for building improvements to a facility that was vacated in 2020.

Provision for income taxes

The provision for income taxes was lower in fiscal 2021 as compared to fiscal 2020 due to lower foreign earnings in fiscal 2021. We also released income tax benefits in fiscal 2020 related to final tax assessments from the Swiss tax authorities for the fiscal period 2018 that otherwise would have reflected a much higher income tax expense for us in fiscal 2020.

Fiscal 2020 results compared to 2019 (in thousands, except percentages)

	Years Ended June 30,					
	2020		2019		change	
	Amount	%(*)	Amount	%(*)	$	% change
Products	$ 167,302	44%	$ 196,665	45%	$ (29,363)	(15)%
Services	215,626	56%	222,120	55%	(6,494)	-3%
Net revenue	$ 382,928	100%	$ 418,785	100%	$ (35,857)	(9)%
Gross profit	$ 149,721	39%	$ 162,651	40%	$ (12,930)	(8)%
Products gross profit	71,420	43%	79,954	44%	(8,534)	-1%
Services gross profit	78,301	36%	82,697	37%	(4,396)	2%
Research and development expenses	49,784	13%	56,493	14%	(6,709)	-12%
Selling and marketing expenses	47,254	12%	55,998	15%	(8,744)	-16%
General and administrative expenses	40,144	10%	49,577	12%	(9,433)	-19%
Loss on equity method investment	149	0%	—	15%	149	—
Other expense, net	6,700	2%	14,927	5%	(8,227)	-55%
Provision for income taxes	1,863	—%	2,086	—%	(223)	-11%
Net loss	$ 3,827	1%	$ (16,430)	(4)%	$ 20,257	(123)%

(*) Expressed as a percentage of total net revenue, except for product and services gross profits which are expressed as a percentage of related product and services revenue.

Net revenue

Product Net Revenue

Product net revenue decreased by $29.4 million, or 15%, as compared to the year ended June 30, 2019. The decrease was primarily due to a reduction in system sales of $35.7 million from lower unit volume offset by a $6.4 million increase in upgrades and other revenue as compared to the prior year.

Service Net Revenue

Service net revenue decreased by $6.5 million, or 3%, as compared to the year ended June 30, 2019. The decrease was primarily driven by a decrease of $4.7 million resulting from fewer upgrades purchased through our service agreements, a $2.7 million decrease of service contract revenue, a $0.5 million decrease in revenue from training, offset by $1.4 million increase in revenue from installations.

Net revenue by geographic region, based on the shipping location of our customer, is as follows (in thousands, except percentages):

	Years Ended June 30,	
	2020	2019
Net revenue	$ 382,928	$ 418,785
Americas	34%	32%
Europe, Middle East, India and Africa	31%	36%
Asia Pacific, excluding Japan and China	8%	11%
Japan	19%	17%
China	8%	5%

Gross profit

The overall gross profit margin was 39% for the years ended June 30, 2020 and 2019. Product gross margin was 43% for the year ended June 30, 2020 as compared to 40% for the year ended June 30, 2019, driven by lower cost of revenue, primarily due to product sales mix. Service revenue gross margin was 36% for the year ended June 30, 2020 as compared to 37% for the year ended June 30, 2019, primarily due to a higher service parts consumption and lower service revenue during fiscal year 2020 as compared to fiscal year 2019.

Research and development expenses

Research and development expenses decreased by $6.7 million, or 12%, for the year ended June 30, 2020 as compared to the year ended June 30, 2019. The decrease was primarily due to a decrease of $3.4 million in compensation and benefits expenses due to lower headcount and related costs, a decrease of $2.9 million in overall operational cost due to changes in the timing of project spend, a decrease of $1.4 million due to a reduction in outsourcing expenses and consultants engaged by the Company in response to uncertainties created by the COVID-19 pandemic and a decrease of $0.3 million in travel expenses, offset by an increase of $1.2 million in research and development facilities expenses.

Selling and marketing expenses

Selling and marketing expenses decreased $8.7 million, or 16%, for the year ended June 30, 2020 as compared to the year ended June 30, 2019. The decrease was primarily due to a decrease of $4.7 million in compensation and employee benefits including a decrease in stock-based compensation driven by lower headcount and related costs, a decrease of $1.6 million in travel expenses due to the impact of the COVID-19 pandemic on travel, a decrease of $1.4 million in marketing expenses driven by postponement of tradeshows, a decrease of $0.7 million in facility cost due to consolidation of facilities and a decrease of $0.2 million driven by lower software service and maintenance expense.

General and administrative expenses

General and administrative expenses decreased by $9.4 million, or 19%, for the year ended June 30, 2020 as compared to the year ended June 30, 2019. The decrease was primarily due to a decrease of $2.6 million related to lower compensation and employee benefits costs, a decrease of $2.6 million due to lower outside service costs related to establishment of the JV as compared to the same period last fiscal year, a benefit of $1.7 million as a result of the conclusion of a foreign indirect tax audit, a decrease in expense for allowance for doubtful accounts of $1.9 million, and a decrease of $0.6 million due to lower facility and IT service costs.

Other expense, net

Other expense, net decreased by $8.1 million, or 54%, for the year ended June 30, 2020 as compared to the year ended June 30, 2019. The decrease was primarily due to a non-cash gain of $13.0 million related to the value of the Accuray systems contributed to the JV in exchange for 49% equity interest, offset by an increase of $2.9 million in net interest expense and an increase of $1.7 million in foreign exchange losses.

Provision for income taxes

The provision for income taxes was lower in fiscal 2020 as compared to fiscal 2019 due to lower foreign earnings in fiscal 2020. In both fiscal 2020 and 2019, we released tax benefits related to final tax assessments from the Swiss tax authorities for the period from fiscal 2018 and 2017, respectively which decreased our foreign taxes for such periods.

Share-Based Compensation Expense

In fiscal 2021, 2020 and 2019, we recorded share-based compensation expense of $9.3 million, $8.2 million and $10.6 million, respectively, related to awards under our stock incentive plans. Share-based compensation expense was recorded net of estimated forfeitures. As of June 30, 2021, we had approximately $16.6 million of unrecognized compensation expense, net of estimated forfeitures, related to unvested stock options, shares under our Employee Stock Purchase Plan, or ESPP, stock options and restricted stock units, or RSUs, which we expect to recognize over a weighted average period from 0.5 to 2.57 years.

Liquidity and Capital Resources

At June 30, 2021, we had $116.4 million in cash and cash equivalents. Cash from operations could be affected by various risks and uncertainties, including, but not limited to the risks included in Part I, Item 1A titled “Risk Factors.” Also refer to Note 10, *Debt* to the consolidated financial statements for discussion of the New Credit Facilities and the Notes as of June 30, 2021. Based on our cash and cash equivalents balance, available debt facilities, current business plan and revenue prospects, we believe that we will have sufficient cash resources and anticipated cash flows to fund our operations for at least the next 12 months. However, we continue to critically review our liquidity and anticipated capital requirements in light of the significant uncertainty created by the COVID-19 pandemic.

In May 2021, we issued $100.0 million aggregate principal amount of 3.75% Convertible Senior Notes due 2026 under an indenture between us and The Bank of New York Mellon Trust Company, N.A., as trustee. $97.1 million aggregate principal amount of the 3.75% Convertible Notes due 2026 were issued to certain holders of 3.75% Convertible Notes due 2022 in exchange for $82.1 million aggregate principal amount of 3.75% Convertible Notes due 2022 outstanding and $2.9 million aggregate principal amount were issued for cash. Concurrently, in May 2021, we entered into a senior secured credit agreement with Silicon Valley Bank, individually as a lender and agent, and the other lenders (the “New Credit Agreement”), which provides for a new five-year $80 million term loan facility and a $40 million revolving credit facility (the “New Revolving Credit Facility”). The initial borrowings under the New Credit Agreement, including $25 million under the New Revolving Credit Facility, were funded on May 14, 2021.

Our liquidity and cash flows has been and could continue to be materially impacted by the diversion of customer resources to the response to the COVID-19 pandemic as well as delays in payments from customers and could be further impacted by additional and prolonged delays in payments from customers, the potential of extended "shelter in place" and social distancing orders or advisories, facility closures, or other reasons related to the COVID-19 pandemic. As of June 30, 2021, there remain uncertainties as to how the COVID-19 pandemic is likely to materially

impact our liquidity in the future. As precautionary measures to increase our cash position and preserve financial flexibility in view of the ongoing uncertainty resulting from the COVID-19 pandemic, we (i) implemented temporary salary reductions for our Chief Executive Officer and each of our Senior Vice Presidents, which was effective June 1, 2020 through December 31, 2020, (ii) eliminated all Board and committee retainers for the period beginning July 1, 2020 through December 31, 2020, (iii) eliminated all awards under the Company Bonus Plan for the fiscal 2020 performance period, other than those that were contractually guaranteed, (iv) implemented a cost saving initiative designed to reduce operating costs through the elimination of approximately 3 percent of our global workforce, (v) amended the credit and security agreements related to our Prior Revolving Credit Facility and Prior Term Loan to modify certain financial covenant requirements and (vi) suspended the 401(k) match program for all employees from June 1, 2020 through December 31, 2020. As of January 1, 2021, our Chief Executive Officer and each of our Senior Vice Presidents' salaries were restored to the base salary levels that were in effect for such officer as of October 2019, all as disclosed in the Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on October 1, 2020 (the "Proxy Statement"). In addition, as of January 1, 2021, the Board and Committee retainers for our Board were restored to the amounts in effect prior to their temporary elimination, as disclosed in the Proxy Statement. Finally, we also reinstated the employer 401(k) match program for all eligible employees as of January 1, 2021.

In addition, we are unable to predict with certainty the impact of the COVID-19 pandemic on our ability to maintain compliance with the debt covenants contained in the credit and security agreements related to our New Credit Facilities, including financial covenants regarding the fixed charge coverage ratio, minimum consolidated cash balance and minimum consolidated domestic cash balance tests. While we were in compliance with such covenants for the year ended June 30, 2021, failure to meet the covenant requirements in the future could cause us to be in default and the maturity of the related debt could be accelerated and become immediately payable. This may require us to obtain waivers or amendments to the credit and security agreement in order to maintain compliance and there can be no certainty that any such waiver or amendment will be available, or what the cost of such waiver or amendment, if obtained, would be. If we are unable to obtain necessary waivers or amendment and the debt under such credit facility is accelerated, we would be required to obtain replacement financing at prevailing market rates, which may not be favorable to us. There is no guarantee that we would be able to satisfy our obligations if any of our indebtedness is accelerated.

Additionally, the undistributed earnings of our foreign subsidiaries at June 30, 2021 are considered to be indefinitely reinvested and unavailable for distribution in the form of dividends or otherwise. Future repatriation of the Company's foreign earnings are subject to income taxes. We anticipate that we have adequate liquidity and capital resources and would not need to repatriate earnings. As of June 30, 2021, we had approximately $63.3 million of cash and cash equivalents at our foreign subsidiaries. If such funds were repatriated, there could be additional foreign tax withholdings imposed depending on the country from which the funds were repatriated. Our foreign earnings are deemed to be indefinitely invested outside the U.S.

Cash Flows

	Years Ended June 30,		
	2021	2020	2019
Net cash provided by (used in) operating activities	$ 38,512	$ (1,469)	$ (29,641)
Net cash used in investing activities	(2,399)	(3,728)	(4,311)
Net cash provided by (used in) financing activities	(28,805)	26,696	28,473
Effect of exchange rate changes on cash, cash equivalents and restricted cash	982	234	124
Net increase (decrease) in cash, cash equivalents and restricted cash	$ 8,290	$ 21,733	$ (5,355)

The COVID-19 pandemic has negatively impacted the global economy, disrupted our global supply chains and created significant volatility and disruption of financial markets all of which could negatively impact our business operations and cash flows for the foreseeable future, including reductions in revenue and delays in payments from customers. The challenges posed by COVID-19 on our business are expected to evolve rapidly. An extended period of global supply chain and economic disruption and volatility in the financial markets, could materially affect our business, results of operations, access to sources of liquidity and financial condition.

Cash Flows From Operating Activities

Net cash provided by operating activities was $38.5 million in fiscal 2021, resulting primarily from non cash items of $39.4 million and changes in working capital of $7.6 million offset by, a net loss of $6.3 million.

- Non-cash items primarily consisted of the loss on extinguishment of debt of $4.3 million related to the exchange of our 3.75% Convertible Notes due 2022 for our 3.75% Convertible Notes due 2026 and $5.7 million related to refinancing of our credit facilities with new lenders, depreciation and amortization expense of $6.4 million, share-based compensation expense of $9.3 million, inventories write-down of $6.9 million, non-cash interest expense on debt of $4.9 million, amortization of debt issuance cost of $1.4 million and intra-entity profit elimination from transactions with the JV of $0.3 million, offset by an in-kind system upgrade contribution to the JV of $1.4 million and an income on equity method investment of $0.9 million;

- The net change in working capital of $7.6 million was primarily due to an increase of $8.1 million in compensation related accrued liabilities due to bonus accrual, a decrease in accounts receivable of $5.2 million and a decrease of $1.7 million in inventories offset by a decrease of $4.0 million in accounts payable, a decrease of $1.6 million in customer advances, deferred revenue and deferred cost of revenue, an increase of $1.0 million in prepaid expenses and other assets and a decrease of $0.7 million in net operating lease liabilities.

Net cash used in operating activities was $1.5 million in fiscal 2020, resulting primarily from a net negative change in working capital of $21.2 million offset by non cash items of $15.9 million and a net income of $3.8 million.

- Non-cash items primarily consisted of the gain on contribution to the JV of $13.0 million, offset by depreciation and amortization expense of $7.5 million, share-based compensation expense of $8.2 million, non-cash interest expense on debt of $4.2 million, inventories write-down of $4.2 million, provision of bad debt of $1.8 million, intra-entity profit elimination from transactions with the JV of $1.8 million, amortization of debt issuance cost of $1.3 million, deferred tax benefit of $0.4 million and a loss on equity method investment of $0.1 million;

- The net change in operating assets and liabilities of $21.2 million was primarily due to an increase of 23.2 million in inventories due to slower than anticipated conversion of our order backlog to revenue, a decrease of $16.6 million in compensation related accrued liabilities and reduction in bonus accrual, a decrease of $6.8 million in accounts payable and a decrease of $0.2 million in net operating lease liabilities offset by receivable collection and a decrease in accounts receivable of $19.0 million, a decrease of $4.4 million in prepaid expense and other assets and an increase of $1.5 million in customer advances, deferred revenue and deferred cost of revenue.

Net cash used in operating activities was $29.6 million in fiscal 2019, resulting primarily from a net change in operating assets and liabilities of $44.6 million and non-cash items of $31.5 million that was offset by a net loss of $16.4 million.

- Non-cash items consisted primarily of stock-based compensation expense of $10.6 million, depreciation and amortization expense of $10.5 million, non-cash interest expenses on debt of $4.9 million, provision for bad debt of $3.7 million, and write down of inventories of $2.3 million.

- The net change in operating assets and liabilities was primarily due to a $46.2 million increase in accounts receivable due to the payment terms and timing of revenue transactions and cash collection, an increase of $14.2 million in inventories to support anticipated product shipments in future periods, an increase of $13.0 million in prepaid and other assets primarily due to incremental costs of obtaining contracts capitalized under ASC 606, and a decrease of $2.5 million in customer advances due to the timing and receipts of new deposits. This was partially offset by an increase of $10.7 million in accrued liabilities and an increase of $9.5 million in accounts payable due to timing of payments.

Cash Flows From Investing Activities

Net cash used in investing activities was $2.4 million in fiscal 2021, which primarily related to the purchase of property and equipment of $2.3 million and an additional investment in the JV of $0.1 million.

Net cash used in investing activities was $3.7 million in fiscal 2020, which primarily consisted of purchases of property and equipment.

Net cash used in investing activities was $4.3 million in fiscal 2019, which primarily consisted of purchases of property and equipment.

Cash Flows From Financing Activities

Net cash used in financing activities during fiscal 2021 was $28.8 million, primarily due to the repayment of all outstanding obligations and termination of the Prior Revolving Credit Facility and Prior Term Loan of $105.4 million, the prepayment during the year of $10.0 million of the principal amount outstanding on our Prior Term Loan, the amendment fee of $0.5 million related to our Prior Credit Facilities, the repurchase of our common stock of $14.1 million, the paydown on our New Revolving Credit Facility of $5.0 million, $0.1 million net cost related to the exchange of our 3.75% Convertible Notes 3.75% due 2022 for our 3.75% Convertible Notes due 2026 and $0.3 million in taxes paid related to net settlement of equity awards, offset by net proceeds from New Revolving Credit Facility and New Term Loan Facility of $103.7 million, proceeds from employee stock plans of $2.2 million and proceeds from exercises of stock options of $0.9 million.

Net cash provided by financing activities during fiscal 2020 was $26.7 million, which was primarily due to a net draw of $24.7 million, net, drawn against our Prior Term Loan Facility and $2.5 million in proceeds from our employee stock purchase plan offset by $0.3 million, net repayments under our Prior Revolving Credit Facility and $0.2 million in taxes paid related to the net share settlement of equity awards.

Net cash provided by financing activities during fiscal 2019 was $28.5 million, which was primarily due to $20.0 million of net debt proceeds related to a draw under our Prior Term Loan, a net $4.6 million increase in borrowings under our Prior Revolving Credit Facility, and $3.9 million in proceeds from employee stock plans.

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 and service plans;
- Our ability to generate cash flows;
- 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;
- Servicing and maturity of our current future indebtedness; and
- The unpredictable impact of the COVID-19 pandemic on collections.

We believe that, based on our cash and cash equivalents balance, available debt facilities, current business plan and revenue prospects, we will have sufficient cash resources and anticipated cash flows to fund our operations for at least the next 12 months. If these sources of cash and cash equivalents are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities, enter into additional credit facilities or we may opportunistically seek to raise capital in debt of equity transactions. 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

The following is a schedule summarizing our obligations to make future payments under contractual obligations as of June 30, 2021. Refer to Note 10, *Debt* in Notes to the Consolidated Financial Statements in Item 8, Part II, of this report on Form 10-K (in thousands):

	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
3.75% Convertible Notes due 2022 and 2026, New Term Loan Facility, and New Revolving Credit Facility(1)	$ 202,865	$ 4,000	$ 14,865	$ 184,000	$ —
Interest on 3.75% Convertible Notes due 2022 and 2026, New Term Loan Facility and New Revolving Credit Facility(2)	33,929	7,424	14,097	12,408	—
Operating leases	27,786	9,564	15,054	3,168	
Total	$ 264,580	$ 20,988	$ 44,016	$ 199,576	$ —

(1) Any conversion, redemption or purchase of our outstanding convertible notes due 2022 and 2026 would impact our cash payments noted in this table. Please see Note 10, *Debt*, to the consolidated financial statements for further information. Amounts presented are for principal only.

(2) Interest on the New Term Loan Facility and New Revolving Credit Facility are accrued at 3.5% per annum, respectively, which may vary in subsequent periods based upon LIBOR and consolidated senior net leverage ratio.

Our purchase commitments and obligations include all open purchase orders and contractual obligations in the ordinary course of business, including commitments with contract manufacturers and suppliers, for which we have not received the goods or services and acquisition and licensing of intellectual property. A majority of these purchase obligations are due within a year. Although open purchase orders are considered enforceable and legally binding, the terms generally allow us the option to cancel, reschedule, and adjust our requirements based on our business needs prior to the delivery of goods or performance of services, and hence, have not been included in the table above.

Off Balance Sheet Arrangements

At June 30, 2021 we had open currency forward contracts to purchase or sell foreign currencies with a stated, or notional, value of approximately $54.2 million. The fair value of the underlying currency based upon the June 30, 2021 exchange rate was approximately $54.2 million. We did not have any off balance sheet arrangements for the years ended June 30, 2020, or 2019.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The preparation of these 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. However, the economic uncertainty in the current environment caused by the COVID-19 pandemic could limit our ability to accurately make and evaluate our estimates and judgments. 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 consolidated financial statements are described in Note 1, *The Company and its Significant Accounting Policies*, to the 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 assessment of recoverability of goodwill and intangible assets, valuation of inventories, share-based compensation expense, convertible notes, income taxes, allowance for doubtful accounts and loss contingencies.

Concentration of Credit and Other Risks

Our cash and cash equivalents are deposited with several major financial institutions. At times, deposits in these institutions exceed the amount of insurance provided on such deposits. We have not experienced any losses in such accounts and do not believe that we are exposed to any significant risk of loss on these balances.

For the year ended June 30, 2021, there was one customer that represented 10% or more of total net revenue and for the years ended June 30, 2020 and 2019, there were no customers that represented 10% or more of total net revenue. We had two customers as of June 30, 2021 and one customer as of June 30, 2020, respectively that each accounted for more than 10% of our total accounts receivable, net.

We perform ongoing credit evaluations of our customers and maintain reserves for potential credit losses. Accounts receivable are deemed past due in accordance with the contractual terms of the agreement. Accounts receivable balances are charged against the allowance for doubtful accounts once collection efforts are unsuccessful.

Single-source suppliers presently provide us with several components. In most cases, if a supplier was unable to deliver these components, we believe that we would be able to find other sources for these components subject to any regulatory qualifications, if required.

Revenue Recognition

Our revenue is primarily derived from sales of CyberKnife and TomoTherapy platforms and services, which include PCS, installation services, training and other professional services. We record our revenue net of any value added or sales tax. We recognize revenue for certain performance obligations at the point in time when control is transferred, such as delivery of products. We recognize revenue for certain other performance obligations over a period of time as control of the goods or services is transferred, such as PCS and construction contracts. Payments received in advance of system shipment are recorded as customer advances and are deferred until control is transferred at which point they are recognized in revenue. We assess the probability of collection based on a number of factors, including past transaction history with the customer and credit-worthiness of the customer. We generally do not request collateral from our customers.

We frequently enter into sales arrangements that contain multiple elements or deliverables. For sale arrangements that contain multiple elements, we account for individual products and services based on relative stand-alone selling price (“SSP”). The SSP is determined based on observable prices at which we separately sell the products and services. If an SSP is not directly observable, then we will estimate the SSP considering market conditions, entity-specific factors, and information about the customer or class of customer that is reasonably available.

Product Revenue

The majority of product revenue is generated from sales of CyberKnife and TomoTherapy platforms, including the Radixact System. Revenue is recognized once the performance obligations are satisfied by transferring control of the product to a customer, which is generally upon delivery.

We record revenue from sales of systems, product upgrades and accessories to our customers based on the general terms and conditions of the executed sales and distribution agreements. We recognize revenue as the performance obligations are satisfied by transferring control of the product or service to our customer.

We record revenue considering all discounts given to, or expected by, customers. As a result, management may make estimates of potential future product returns or trade ins and other allowances related to product revenue in the current period. In general, we do not allow returns from customers and all discounts and allowances are clearly identified in the terms and conditions of each sale. We derive some product revenue from sales to the JV.

Service Revenue

Service revenue is generated primarily from PCS contracts (warranty period services and post warranty services), installation services, training and professional services. Service revenue is recognized either over time ratably over the contractual period as control and benefit transfer to the customer or at a point in time when service is performed, depending on specific terms and conditions in agreements with customers. We derive some service revenue from sales to the JV.

Costs associated with service revenue are expensed when incurred, except when those costs are related to system upgrades purchased within a service contract. In those cases, the costs of such upgrades are recognized at the time the upgrade revenue is recognized.

Assessment of Recoverability of Goodwill and Intangible Assets

Goodwill represents the excess of the purchase price 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 and when impairment indicators are present. We have one operating segment and one reporting unit. Therefore, our consolidated net assets, including existing goodwill and other intangible assets, are considered to be the carrying value of the reporting unit. We estimate the fair value of the reporting unit based on the closing price of our common stock on the trading day closest to the annual review date multiplied by the outstanding shares on that date. If the carrying value of the reporting unit is in excess of its fair value, an impairment may exist, and we 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. If the estimated fair value of the reporting unit exceeds the carrying value of the reporting unit, goodwill is not impaired and no further analysis is required.

We make judgments about the recoverability of purchased intangible assets with finite lives whenever events or changes in circumstances indicate that 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. 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.

Valuation of 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 beyond the current reserve, which would negatively impact our gross margin.

Share-Based Compensation Expense

We use the Black Scholes option valuation model to estimate the fair value of stock options and ESPP shares. This valuation model requires the input of highly subjective assumptions, the most significant of which is our estimates of expected volatility and the expected term of the award. Our expected volatility is derived from the historical volatilities of our common stock. We estimate the expected term of stock option by taking the average of the vesting term and the contractual term of the option, as illustrated by the simplified method. We use the Monte Carlo simulation model to estimate the grant date fair value of Market Stock Units, or MSUs. With respect to Performance Stock Units that are based on our corporate financial performance targets, or PSUs, the number of PSUs that will ultimately be awarded is contingent on our actual level of achievement compared to the corporate financial target performance targets. 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. 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.

Convertible Notes

We account for convertible notes in accordance with applicable guidance which specifies that an issuer of such instruments should separately account for the liability and equity component of the conversion option. The amount recorded as debt is based on the fair value of the debt component as a standalone instrument, determined based on an implied credit spread interest rate for nonconvertible debt. This implied credit spread was derived from the trading history of our convertible notes and a range of estimated market volatility. The difference between the debt recorded at inception and its principal amount is accreted to principal during the estimated life of the note. ASC 470-50, provides guidance on modifications to or exchanges of line-of-credit or revolving arrangements which should be evaluated based on borrowing.

Leases

We are the lessee in a lease contract when we obtain the right to use the asset. Operating leases are included in the line items right-of-use asset, lease obligation, current, and lease obligation, long-term in the consolidated balance sheet. Right-of-use asset represents our right to use an underlying asset for the lease term and lease obligations represent our obligation to make lease payments arising from the lease, both of which are recognized based on the present value of the future minimum lease payments over the lease term at the commencement date. Leases with a lease term of 12 months or less at inception are not recorded on the consolidated balance sheet and are expensed on a straight-line basis over the lease term in our consolidated statement of income. We determine the lease term by agreement with lessor. As our lease does not provide an implicit interest rate, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of future payments.

Refer to Note 2. Recent Accounting Pronouncements and Note 5. Leases to our consolidated financial statements included in this Annual Report on Form 10-K for further information on our adoption of ASC 842.

Income Taxes

We determine 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 fourth quarter of the subsequent year for U.S. federal and state provisions. 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 does not include the impact of undistributed foreign earnings for which we have not provided income taxes related to foreign tax withholdings because we plan to reinvest such earnings indefinitely outside the United States. We have estimated whether there is a need for 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.

Allowance for Credit Losses

We evaluate the creditworthiness of our customers prior to authorizing shipment for all major sale transactions. On a quarterly basis, we evaluate aged items in the accounts receivable aging report and provide an allowance in an amount we deem adequate for doubtful accounts. If our evaluation of our customers' financial conditions does not reflect our future ability to collect outstanding receivables, additional provisions may be needed and our operating results could be negatively affected.

Loss Contingencies

As discussed in Note 9. *Commitments and Contingencies*, to the 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. We provide disclosure if it is reasonably possible that a loss has been incurred and a range of loss or possible loss 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. 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.

Item 7A. QUANTITATIVE & QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions.

Foreign Currency Exchange Rate Risk

A portion of our net sales are denominated in foreign currencies, most notably the Euro and the Japanese Yen. 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, 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. We expect the changes in the fair value of the net foreign currency assets arising from fluctuations in foreign currency exchange rates to be materially offset by the changes in the fair value of the forward contracts. As of June 30, 2021, we had open currency forward contracts to purchase or sell foreign currencies with stated, or notional value of approximately $54.2 million.

The purpose of these forward contracts is to minimize the risk associated with foreign exchange rate fluctuations. We have developed a foreign exchange policy to govern our forward contracts. These foreign currency forward contracts do not qualify as cash flow hedges and all changes in fair value are reported in earnings as part of other expenses, net. We have not entered into any other types of derivative financial instruments for trading or speculative purpose. Our foreign currency forward contract valuation inputs are based on quoted prices and quoted pricing intervals from public data and do not involve management judgment.

Interest Rate Risk

We maintain an investment portfolio of various holdings, types and maturities. These securities are generally classified as available for sale and consequently are recorded on the balance sheet at fair value with unrealized gains and losses reported as a separate component of accumulated other comprehensive income. At any time, a sharp rise or decline in interest rates could have a material adverse impact on the fair value of our investment portfolio. Likewise, increases and decreases in interest rates could have had a material impact on interest earnings for our portfolio. We do not currently carry investments that are sensitive to interest rate risk.

Our debt obligations consist of a variety of financial instruments that expose us to interest rate risk, including, but not limited to the New Credit Facilities and Notes. The interest rates on the Notes are fixed and the interest rate on the New Credit Facilities are at variable rates, which are tied to a “prime rate” and LIBOR. As of June 30, 2021, borrowings under the New Term Loan Facility totaled $78.7 million net of issuance cost with an annual interest rate of 3.0% plus 90-day LIBOR, and borrowings under the New Revolving Credit Facility totaled $20.0 million with an annual interest rate of 3.0% plus 90-day LIBOR. If the amount outstanding under the New Credit Facilities remained at this level for the next 12 months and interest rates increased or decreased by 50 basis point change, our annual interest expense would increase or decrease, respectively, approximately $0.5 million. Refer to Note 10, *Debt* to our consolidated financial statements included in this Annual Report on Form 10-K for a discussion regarding our debt obligations.

Equity Price Risk

On August 7, 2017, we issued approximately $85.0 million aggregate principal amount of 3.75% Convertible Notes due 2022. Upon conversion, we can settle the obligation by issuing our common stock, cash or a combination thereof at an initial conversion rate equal to 174.8252 shares of common stock per $1,000 principal amount of the 3.75% Convertible Notes due 2022, which is equivalent to a conversion price of approximately $5.72 per share of common stock, subject to adjustment. There is no equity price risk if the share price of our common stock is below $5.72 upon conversion of the 3.75% Convertible Notes due 2022. As of June 30, 2021 the remaining outstanding principal amount of 3.75% Convertible Notes due 2022 is $2.9 million for every $1 that the share price of our common stock exceeds $5.72, we expect to issue an additional $0.5 million in cash or shares of our common stock, or a combination thereof, if all of the 3.75% Convertible Notes due 2022 are converted.

On May 13, 2021, we issued approximately $100.0 million aggregate principal amount of 3.75% Convertible Notes due 2026. Upon conversion, we can settle the obligation by issuing our common stock, cash or a combination thereof at an initial conversion rate equal to 170.5611 shares of common stock per $1,000 principal amount of the 3.75% Convertible Notes due 2026, which is equivalent to a conversion price of approximately $5.86 per share of common stock, subject to adjustment. There is no equity price risk if the share price of our common stock is below $5.86 upon conversion of the 3.75% Convertible Notes due 2026. For every $1 that the share price of our common stock exceeds $5.86, we expect to issue an additional $17.1 million in cash or shares of our common stock, or a combination thereof, if all of the 3.75% Convertible Notes due 2026 are converted.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

ACCURAY INCORPORATED
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Accuray Incorporated

Opinion on the financial statements
We have audited the accompanying consolidated balance sheets of Accuray Incorporated (a Delaware corporation) and subsidiaries (the "Company") as of June 30, 2021 and 2020, the related consolidated statements of operations and comprehensive income (loss), stockholders' equity, and cash flows for each of the three years in the period ended June 30, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of June 30, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended June 30, 2021, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of June 30, 2021, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and our report dated August 17, 2021 expressed an unqualified opinion.

Basis for opinion
These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matter
The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Determination of standalone selling price
As described further in Note 1 to the financial statements, the Company's contracts with customers often include multiple performance obligations. The Company applies the five steps of Financial Accounting Standards Board Topic 606, *Revenue from Contracts with Customers*, in the determination of revenue to be recognized, with step four related to the allocation of the transaction price to multiple performance obligations. The transaction price of each contract is allocated to individual performance obligations based upon relative stand-alone selling price ("SSP"). The SSP of performance obligations is determined based on observable prices at which the Company separately sells the products and services. If the SSP is not directly observable, the Company will estimate the SSP considering market conditions, entity-specific factors, and information about the customer or class of customer that is reasonably available. We identified the determination of the SSP of performance obligations as a critical audit matter.

The principal consideration for our assessment that the determination of the SSP of performance obligations represents a critical audit matter is that the estimates made in determining SSP involve significant judgments. Evaluating the appropriateness of these estimates requires a high degree of auditor judgment and an increased extent of effort.

Our audit procedures related to the determination of the SSP of performance obligations included the following, among others:

- We tested the design and operating effectiveness of internal controls over the Company's determination of the SSP of performance obligations, including controls covering the validation of the completeness and accuracy of underlying data used in the analysis.
- We evaluated the appropriateness of the overall methodology used by management, including considering whether the methodology maximized the use of observable inputs available.
- For products and services where the SSP is directly observable, we evaluated the completeness and accuracy of the data used by management in determining whether the range of observable data points provided objective evidence of SSP. We recalculated the pricing inputs within the analysis and agreed selected data to executed sales agreements and considered the appropriateness of any sales excluded from the analysis.
- We tested management's process by evaluating key assumptions for performance obligations that do not include directly observable sales or for performance obligations that do not include sufficient directly observable sales. Specifically, we:
  - considered how management determined the disaggregation of distinct customer groups;
  - determined the appropriateness of discount rates applied to list prices based on the Company's pricing strategy and target margins for customer groups, including comparing the discount rates to internal pricing policies;
  - recalculated and validated the inputs used in the calculation;
  - made inquiries of staff members outside of the accounting department to determine if there are factors that could have indicated a change in the Company's go-to market strategy;
  - compared the SSP indicated by management's analysis to performance obligations within bundled arrangements for a sample of items; and
  - compared SSP at the performance obligation level to the prior year and evaluated the reasons for significant fluctuations.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2006.

San Jose, California
August 17, 2021

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

	June 30, 2021	June 30, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 116,369	$ 107,577
Restricted cash	560	997
Accounts receivable, net of allowance for credit losses of $1,048 and $1,268 as of June 30, 2021 and June 30, 2020, respectively (a)	85,360	90,599
Inventories, net	125,929	134,374
Prepaid expenses and other current assets (b)	21,547	21,227
Deferred cost of revenue	3,008	2,712
Total current assets	352,773	357,486
Property and equipment, net	12,332	15,349
Investment in joint venture	15,935	13,929
Operating lease right-of-use assets, net	22,522	28,647
Goodwill	57,960	57,717
Intangible assets, net	435	663
Restricted cash	1,272	1,337
Other assets	16,869	15,799
Total assets	$ 480,098	$ 490,927
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 19,467	$ 23,126
Accrued compensation	26,865	17,963
Operating lease liabilities, current	8,169	8,224
Other accrued liabilities	27,471	27,180
Customer advances	24,937	22,571
Deferred revenue	81,660	83,207
Short-term debt	3,790	—
Total current liabilities	192,359	182,271
Long-term liabilities:		
Operating lease liabilities, non-current	17,441	24,173
Long-term other liabilities	7,766	7,416
Deferred revenue	23,685	24,125
Long-term debt	170,007	189,307
Total liabilities	411,258	427,292
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.001 par value; authorized: 5,000,000 shares; no shares issued and outstanding	—	—
Common stock, $0.001 par value; authorized: 200,000,000 shares as of June 30, 2021 and June 30, 2020, respectively; issued and outstanding: 90,821,661 and 91,178,108 shares at June 30, 2021 and June 30, 2020, respectively	91	91
Additional paid-in-capital	554,680	545,741
Accumulated other comprehensive income (loss)	2,093	(484)
Accumulated deficit	(488,024)	(481,713)
Total stockholders' equity	68,840	63,635
Total liabilities and stockholders' equity	$ 480,098	$ 490,927

(a) Included accounts receivable from the China joint venture of $8,822 and $3,039 at June 30, 2021 and June 30, 2020, respectively. See Note 13
(b) Included other receivable from the China joint venture of $187 at June 30, 2021 and $0 at June 30, 2020, respectively.

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

Accuray Incorporated
Consolidated Statements of Operations and Comprehensive Income (Loss)
(in thousands, except per share amounts)

	Years Ended June 30,		
	2021	2020	2019
Net revenue:			
Products (a)	$ 176,647	$ 167,302	$ 196,665
Services (b)	219,642	215,626	222,120
Total net revenue	396,289	382,928	418,785
Cost of revenue:			
Cost of products	102,100	95,882	116,711
Cost of services	134,682	137,325	139,423
Total cost of revenue (c)	236,782	233,207	256,134
Gross profit	159,507	149,721	162,651
Operating expenses:			
Research and development	52,729	49,784	56,493
Selling and marketing	42,820	47,254	55,998
General and administrative	41,723	40,144	49,577
Total operating expenses	137,272	137,182	162,068
Income from operations	22,235	12,539	583
Income (loss) on equity method investment	872	(149)	—
Other expense, net	(27,666)	(6,700)	(14,927)
Income (loss) before provision for income taxes	(4,559)	5,690	(14,344)
Provision for income taxes	1,752	1,863	2,086
Net income (loss)	$ (6,311)	$ 3,827	$ (16,430)
Net income (loss) per share - basic	$ (0.07)	$ 0.04	$ (0.19)
Net income (loss) per share - diluted	$ (0.07)	$ 0.04	$ (0.19)
Weighted average common shares used in computing net income (loss) per share:			
Basic	92,031	89,874	87,465
Diluted	92,031	90,623	87,465
Net income (loss)	$ (6,311)	$ 3,827	$ (16,430)
Foreign currency translation adjustment	1,705	(238)	(247)
Reclassification adjustments on available for sale investments, net of tax	—	—	—
Change in defined benefit pension obligation	872	(236)	(856)
Comprehensive income (loss)	$ (3,734)	$ 3,353	$ (17,533)

(a) Includes sales to the China joint venture, an equity method investment of $12,033 for the year ended June 30, 2021, $11,202 for the years ended June 30, 2020 and $0 for the year ended June 30, 2019, respectively. See Note 13.

(b) Includes sales to the China joint venture, an equity method investment of $12,360 for the year ended June 30, 2021, $7,851 for the years ended June 30, 2020 and $0 for the year ended June 30, 2019, respectively. See Note 13.

(c) Includes cost of revenue from sales to the China joint venture, an equity method investment of $13,310 for the year ended June 30, 2021, $13,174 for the years ended June 30, 2020 and $0 for the year ended June 30, 2019, respectively. See Note 13.

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

Accuray Incorporated
Consolidated Statement of Stockholders' Equity
(in thousands, except share amounts)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at June 30, 2018	86,129,256	$ 86	$ 521,738	$ 1,093	$ (474,285)	$ 48,632
Exercise of options, net	114,932	—	489	—	—	489
Issuance of restricted stock	1,491,379	2	(2)	—	—	—
Issuance of common stock under employee stock purchase plan	911,741	1	3,021	—	—	3,022
Share-based compensation	—	—	10,086	—	—	10,086
Tax withholding upon vesting of restricted stock units	(125,797)	—	—	—	—	—
Adoption of new revenue recognition standard	—	—	—	—	5,175	5,175
Net loss	—	—	—	—	(16,430)	(16,430)
Cumulative translation adjustment	—	—	—	(247)	—	(247)
Change in defined benefit pension obligation	—	—	—	(856)	—	(856)
Balance at June 30, 2019	88,521,511	$ 89	$ 535,332	$ (10)	$ (485,540)	$ 49,871
Issuance of restricted stock	1,579,037	1	(207)	—	—	(206)
Issuance of common stock under employee stock purchase plan	1,136,096	1	2,450	—	—	2,451
Share-based compensation	—	—	8,166	—	—	8,166
Tax withholding upon vesting of restricted stock units	(58,536)	—	—	—	—	—
Net income	—	—	—	—	3,827	3,827
Cumulative translation adjustment	—	—	—	(238)	—	(238)
Change in defined benefit pension obligation	—	—	—	(236)		(236)
Balance at June 30, 2020	91,178,108	$ 91	$ 545,741	$ (484)	$ (481,713)	$ 63,635
Exercise of options, net	209,008	—	855	—		855
Issuance of restricted stock	1,452,618	2	—	—	—	2
Issuance of common stock under employee stock purchase plan	1,168,220	1	2,173	—	—	2,174
Repurchase of common stock	(3,108,369)	(3)	(14,078)	—	—	(14,081)
Share-based compensation	—	—	9,385	—	—	9,385
Tax withholding upon vesting of restricted stock units	(77,924)	—	—	—	—	—
Extinguishment of allocated cost related to convertible note exchange	—	—	(14,562)	—	—	(14,562)
Bifurcation of conversion option upon issuance of convertible notes	—	—	25,166	—	—	25,166
Net income	—	—	—	—	(6,311)	(6,311)
Cumulative translation adjustment	—	—	—	1,705	—	1,705
Change in defined benefit pension obligation	—	—	—	872	—	872
Balance at June 30, 2021	90,821,661	$ 91	$ 554,680	$ 2,093	$ (488,024)	$ 68,840

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

Accuray Incorporated
Consolidated Statements of Cash Flows
(in thousands)

	Years Ended June 30,		
	2021	**2020**	**2019**
Cash flows from operating activities			
Net income (loss)	$ (6,311)	$ 3,827	$ (16,430)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	6,389	7,541	10,491
Share-based compensation	9,332	8,152	10,601
Amortization of debt issuance costs	1,356	1,348	1,528
Accretion of interest on debt	4,887	4,168	3,371
Provision for credit losses	133	1,797	3,681
Non-cash revenue transactions related to joint venture	(1,365)	—	—
Provision for write-down of inventories	6,914	4,184	2,340
Loss on disposal of property and equipment	106	9	2,588
(Income) loss on equity method investment	(872)	149	—
Release (deferral) of equity method investment intra-entity profit on sales	310	1,847	—
Loss on extinguishment of debt	9,948	—	—
Gain on termination of lease obligation	—	—	(1,007)
Gain on contribution to joint venture	—	(12,964)	—
Provision (benefit) for deferred income taxes	(114)	353	(86)
Changes in assets and liabilities:			
Accounts receivable, short and long-term	5,235	19,030	(46,165)
Inventories	1,688	(23,178)	(14,165)
Prepaid expenses and other assets	(951)	4,403	(13,049)
Deferred cost of revenue, short and long-term	(296)	(2,441)	531
Accounts payable	(3,978)	(6,770)	9,456
Operating lease liabilities, net	(663)	(235)	—
Accrued liabilities	8,089	(16,595)	10,857
Customer advances	2,237	2,159	(2,549)
Deferred revenues, short and long-term	(3,562)	1,747	8,366
Net cash provided by (used in) operating activities	38,512	(1,469)	(29,641)
Cash flows from investing activities			
Purchases of property and equipment, net	(2,320)	(3,558)	(4,311)
Purchase of intangible assets	—	(170)	—
Additional investments in joint venture	(79)	—	—
Net cash (used in) investing activities	(2,399)	(3,728)	(4,311)
Cash flows from financing activities			
Proceeds from employee stock plans	2,175	2,450	3,927
Proceeds from exercise of options	855	—	—
Taxes paid related to net share settlement of equity awards	(343)	(207)	—
Convertible senior notes exchange and issued, net of issuance costs	(142)	—	—
Paydown and Repayment of Prior Term Loan and Prior Revolving Credit Facility, net	(115,924)	—	—
Proceeds from New debt, net of costs	103,654	24,716	19,968
Borrowings (repayments) under the New Revolving Credit Facility, net	(5,000)	(263)	4,578
Stock repurchase	(14,080)	—	—
Net cash provided by (used in) financing activities	(28,805)	26,696	28,473
Effect of exchange rate changes on cash, cash equivalents and restricted cash	982	234	124
Net increase (decrease) in cash, cash equivalents and restricted cash	8,290	21,733	(5,355)
Cash, cash equivalents and restricted cash at beginning of period	109,911	88,178	93,533
Cash, cash equivalents and restricted cash at end of period	$ 118,201	$ 109,911	$ 88,178
Supplemental Disclosure of Cash Flow Information			
Cash paid for income taxes	$ 1,873	$ 2,806	$ 2,191
Cash paid for interest	$ 11,892	$ 12,332	$ 9,761
Supplemental non-cash disclosure:			
Non-cash effect of pension settlement accounting	$ —	$ 178	$ —
Prior convertible note exchanged	$ (82,135)	$ —	$ —
New convertible note exchanged	$ 97,148	$ —	$ —
Unpaid purchase of property and equipment at end of year	$ 555	$ 226	$ 235
Transfers from inventory to property and equipment	$ 564	$ 2,594	$ 1,170
Equity method investment, in exchange for non-cash contributions of assets to China Joint Venture (including gain of $12,964)	$ —	$ 15,925	$ —

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

Note 1. The Company and its Significant Accounting Policies

The Company

Accuray Incorporated (together with its subsidiaries, the "Company" or "Accuray") designs, develops and sells advanced radiosurgery and radiation therapy systems for the treatment of tumors throughout the body. The Company is incorporated in Delaware and has its principal place of business in Sunnyvale, California. The Company has primary offices in the United States, Switzerland, China, Hong Kong and Japan and conducts its business worldwide.

Basis of Presentation and Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant inter-company transactions and balances have been eliminated in consolidation.

The accompanying 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").

Risks and Uncertainties

The Company is subject to risks and uncertainties as a result of a novel strain of coronavirus, severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2, which causes coronavirus disease 2019 ("COVID-19") and has resulted in a worldwide pandemic. The extent of the impact of the COVID-19 pandemic on the Company's business is highly uncertain and difficult to predict, as the effects of and response to the pandemic are rapidly evolving and new information is regularly coming to light. The Company's customers are diverting resources to treat COVID-19 patients and deferring non-urgent and elective procedures, both of which are likely to impact customers' ability to meet their other financial obligations, including to the Company. Some customers, which include hospitals, major academic medical centers, and other related entities, have incurred significant losses during the COVID-19 pandemic due to reduced patient volume. Furthermore, a global economic slowdown due to disruptions caused by the COVID-19 pandemic may result in an incremental adverse impact on revenue, net income and cash flow and may require significant additional expenditures or cost-cutting to mitigate such impacts. Policymakers around the globe have responded with fiscal policy actions to support the healthcare industry and economy as a whole. The magnitude and overall effectiveness of these actions remain uncertain.

The Company's financial results have also been affected by the COVID-19 pandemic in various ways. The COVID-19 pandemic is adversely impacting the pace at which the Company's backlog converts to revenue in the near-term. This is primarily the result of delays in the timing of deliveries and installations in fiscal 2020 and 2021 caused by the COVID-19 pandemic. The Company expects that such delays in deliveries and installations may continue through the end of fiscal 2022, which could have a negative impact on revenue during such period. The Company has experienced disruptions in its sales and revenue cycle as well as delays in customer payments, delays in planned installations and service agreements as a result of the effect of the COVID-19 pandemic on the Company's customers as well as restrictions imposed on travel.

The Company also received requests from a few customers to extend payment terms or temporarily suspend service and corresponding payment obligations. While the Company has only received a small number of requests thus far, there can be no guarantee that more customers will not ask for the same in the future. As a result, the Company is carefully monitoring the pandemic and the potential length and depth of the resulting economic impact on our financial condition and results of operations. There remain uncertainties around the spread of COVID-19, how long the pandemic will last and the timing and extent of an economic recovery, and as a result, the related financial impact cannot be reasonably estimated at this time, although the impacts are expected to continue and may significantly affect the Company's business.

The Company continues to critically review its liquidity and anticipated capital requirements in light of the significant uncertainty created by the COVID-19 pandemic. Based on the Company's cash and cash equivalents balance, available debt facilities, current business plan and revenue prospects, the Company believes that it will have sufficient cash resources and anticipated cash flows to fund its operations for at least the next 12 months. However, the Company is unable to predict with certainty the impact of the COVID-19 pandemic on its ability to maintain compliance with the debt covenants contained in the credit agreement related to its New Credit Facility (as such terms are defined in Note 10 below), including financial covenants regarding the consolidated fixed charge coverage ratio and consolidated senior net leverage ratio. The Company was in compliance with such covenants at June 30, 2021. Failure to meet the covenant requirements in the future could cause the Company to be in default and the maturity of the related debt could be accelerated and become immediately payable. This may require the Company to obtain waivers or amendments to the credit agreement in order to maintain compliance and there can be no certainty that any such waiver or amendment will be available, or what the cost of such waiver or amendment, if obtained, would be. If the Company is unable to obtain necessary waivers or amendment and the debt under such credit facility is accelerated, the Company would be required to obtain replacement financing at prevailing market rates, which may not be favorable to the Company. There is no guarantee that the Company would be able to satisfy its obligations if any of its indebtedness is accelerated.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and related disclosures at the date of the financial statements. The Company assessed certain accounting matters that generally require consideration of forecasted financial information in context with the information reasonably available to the Company and the unknown future impacts of the COVID-19 pandemic. Key estimates and assumptions made by the Company relate to revenue recognition and the assessment of stand-alone selling price ("SSP"), assessment of recoverability of goodwill and intangible assets, valuation of our equity method investment in the JV, valuation of inventories, share based compensation expense, convertible notes, income taxes, allowance for doubtful accounts and loss contingencies. 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 loss and are recorded in accumulated other comprehensive loss as a separate component of stockholders' equity. Net foreign currency exchange transaction gains or losses are included as a component of other expense, net, in the Company's consolidated statements of operations and comprehensive income (loss).

Fair Value Measurements

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. Also refer to Note 8, *Fair Value Measurements*, for further details.

Cash and Cash Equivalents

The Company considers currency on hand, demand deposits, time deposits, and all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash and cash equivalents. Cash and cash equivalents are held in various financial institutions in the United States and internationally.

Concentration of Credit Risk and Other Risks and Uncertainties

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.

The Company had one customer that represented 10% or more of total net revenue for the year ended June 30, 2021 and no customer that represented 10% or more of total net revenue for the years end June 30, 2020 and 2019. The Company had two customers as of June 30, 2021 and one customer as of June 30, 2020, respectively that each accounted for more than 10% of accounts receivable, net.

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 credit losses 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 was 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.

Restricted Cash

Restricted cash primarily consists of cash that is temporarily held in bank accounts which are under the control of the lender to the New Credit Facility, certificates of deposit held as guarantees in connection with customer contracts and corporate leases as well as funds held as guarantees for Value-Added Tax (VAT) obligations in a foreign jurisdiction.

Inventories

Inventories are stated at the lower of cost (on a first-in, first-out basis) or net realizable value. Excess and obsolete inventories are written down based on historical sales and forecasted demand, as judged by management.

Revenue Recognition

The Company's revenue consists of product revenue resulting from the sale of systems, system upgrades and service revenue. The Company accounts for a contract with a customer when there is a legally enforceable contract between the Company and its customer, the rights of the parties are identified, the contract has commercial substance, and collectability of the contract consideration is probable. The Company's revenues are measured based on the consideration specified in the contract with each customer, net of any discounts and taxes collected from customers that are remitted to government authorities.

The Company's revenue is primarily derived from sales of CyberKnife and TomoTherapy platforms and services, which include post-contract customer support ("PCS"), installation services, training and other professional services.

The majority of the Company's revenue arrangements consist of multiple performance obligations, which can include system, upgrades, installation, training, services, construction, and consumables. For bundled arrangements, the Company accounts for individual products and services separately if a product or service is separately identifiable from other items in the bundled package and if a customer can benefit from it on its own or with other resources that are readily available to the customer.

The Company's products are generally sold without a right of return, and the Company's contracts generally provide a fixed transaction price. The Company may offer incentives in the form of discounts, including volume system discounts, which are included in the contract and used to calculate the final fixed price of the arrangement. These discounts may pertain to all performance obligations in a specific contract or may be allocated to a specific performance obligation. The Company estimates a financing component in transactions with payment terms extending beyond one year. This financing component is recognized as interest income over time. The Company applies the practical expedient to not adjust for a significant financing component if the gap between payment and delivery was expected, at the contract inception, to be less than one year.

The Company offers customers the opportunity to trade in their older systems for credit towards the purchase of a new system. The Company generally does not provide specific trade-in prices or upgrade rights at the time of purchase of the original system. Trade-in or upgrade transactions are based on the then fair value of the system and are separately negotiated taking into consideration circumstances existing at the time of the trade-in or upgrade. Accordingly, trade-ins and upgrades are not considered separate performance obligations in system sales agreements. When systems are traded in, historically, the Company was able to recondition (re-new) the traded-in systems and resell them. In such transactions, the Company would estimate the stand-alone selling price of the traded-in system and include such amount as additional transaction price in the new bundled system sale. In fiscal year 2020, however, demand for reconditioned systems has decreased, and no fair value has been assigned to any of the systems that were traded-in during fiscal year 2021. These trade-in systems may be used for spare parts harvesting in certain cases. Such spare parts generally require reconditioning.

The SSP of performance obligations is determined based on observable prices at which the Company separately sells the products and services. If the SSP is not directly observable, then the Company will estimate the SSP considering market conditions, entity-specific factors, and information about the customer or class of customer that is reasonably available. The SSP is generally assessed as a percentage of the list price. The contract consideration allocation is based on the SSP at contract inception. The consideration (net of any discounts) is allocated among separate products and services in a bundle based on their relative SSPs. For contract modifications that add additional goods or services or change pricing, the most recent SSP is used for reallocation to the remaining performance obligations.

The Company recognizes revenue for certain performance obligations at the point in time when control is transferred, such as delivery of products and upgrades. Service revenue is recognized over the term of the service period as the customer benefits from the services throughout the service period. Revenue related to services performed on a time-and-materials basis is recognized when performed. Service contracts recognized over time comprise a single stand-ready performance obligation satisfied over time as our customers simultaneously receive and consume benefits from the Company's performance. This performance obligation constitutes a series of services that are substantially the same and provided over time using the same measure of progress. Service contract revenue is recognized over the term of the service period as the customer benefits from the services throughout the service period. Revenues derived from these arrangements are recognized over time using an output method based upon the passage of time as this provides a faithful depiction of the pattern of transfer of control.

The Company recognizes an asset for the incremental costs of obtaining a contract with a customer when the Company expects to generate future economic benefits from the related revenue-generating contracts. The Company capitalizes incremental contract acquisition costs, and amortizes such costs over a five year period, the period which the Company expects to benefit, based on historical service renewal rates, and expectations of future customer renewals. Most of the Company’s contract costs are associated with its internal sales force compensation program and a portion of its employee bonus program. The Company capitalizes and amortizes the incremental costs of obtaining a contract, primarily related to certain bonuses and sales commissions. The capitalized bonuses and sales commissions are amortized over a period of five years commencing upon the initial transfer of control of the system to the customer. The pattern of amortization is commensurate with the pattern of transfer of control of the performance obligations to the customer. The amortization of these contract assets is included in cost of sales, research and development, sales and marketing, and general and administrative expenses based on department headcount allocations in the consolidated statements of operations. The Company elected to use the practical expedient and expense as incurred commissions related to service renewals and upgrades because the amortization period would be less than a year.

The Company invoices its customers based on the billing schedules in its sales arrangements. Payment terms vary from 30 to 90 days, or longer, from the date of invoice. Contract assets for the periods presented primarily represent the difference between the revenue that was recognized based on the relative standalone selling price of the related performance obligations satisfied and the contractual billing terms. Deferred revenue for periods presented primarily relates to service contracts where the service fees are billed up-front, generally quarterly or annually, prior to services being performed. The associated deferred revenue is generally recognized over the term of the service period. The Company did not have any significant impairment losses on its contract assets for any period presented.

Deferred Revenue

Deferred revenue primarily consists of unfulfilled obligations from open contracts for which performance has already started including short-shipped items, deferred warranty, training, maintenance services and other unperformed or incomplete performance obligations. Service contracts for maintenance services, in general, are considered month-to-month contracts. Deferred revenue includes deferred warranty expected to be recognized over the remaining warranty period for system already installed.

Customer Advances

Customer advances represent payments made by customers in advance of product shipment. In general, customer advances are required for a contract to be recognized in our backlog.

Property and Equipment

Property and equipment are stated at cost and are depreciated using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are depreciated on a straight-line basis over the remaining term of the lease or the estimated useful life of the asset, whichever is shorter. Machinery and equipment are depreciated over five years. Furniture and fixtures are depreciated over four years. Computer and office equipment and computer software are depreciated over three years. Repairs and maintenance costs, which are not considered improvements and do not extend the useful life of the property and equipment, are expensed as incurred.

Software Capitalization Costs

Costs for the development of new software products and substantial enhancements to existing software products are expensed as incurred until technological feasibility has been established, at which time any additional costs would be capitalized. No costs associated with the development of software have been capitalized as the Company believes its current software development process is essentially completed concurrent with the establishment of technological feasibility.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including intangible assets, equity method investment in the JV, property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable using pretax undiscounted cash flows. Impairment, if any, is measured as the amount by which the carrying value of a long-lived asset exceeds its fair value.

Goodwill and Purchased Intangible Assets

Goodwill is not amortized, but is evaluated for impairment on an annual basis and when impairment indicators are present. The Company has assessed that it has one operating segment and one reporting unit, and the consolidated net assets, including existing goodwill and other intangible assets, are considered to be the carrying value of the reporting unit. The Company estimates the fair value of the 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 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 estimated fair value of the goodwill is compared to its carrying value to determine the impairment charge, if any. If the estimated fair value of the reporting unit exceeds the carrying value of the reporting unit, goodwill is not impaired and no further analysis is required. The Company adopted the new accounting guidance that simplifies the testing for goodwill impairment in the first quarter of fiscal 2019. There was no impairment of goodwill identified in the fiscal years ended June 30, 2021, 2020 and 2019.

Purchased intangible assets other than goodwill, including developed technology 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 seven years.

Shipping and Handling

The Company's billings for shipping and handling for product shipments to customers are included in cost of products. Shipping and handling costs incurred for inventory purchases are capitalized in inventory and expensed in cost of products.

Advertising Expenses

The Company expenses the costs of advertising and promoting its products and services as incurred. Advertising expenses were approximately $0.2 million, $0.2 million and $0.5 million for the years ended June 30, 2021, 2020 and 2019, respectively, and are included in selling and marketing expense in the consolidated statements of operations.

Research and Development Costs

Costs related to research, design and development of products are charged to research and development expense as incurred. These costs include direct compensation, benefits, and other headcount related costs for research and development personnel; costs for materials used in research and development activities; costs for outside services and allocated portions of facilities and other corporate costs. The Company has entered into research and clinical study arrangements with selected hospitals, cancer treatment centers, academic institutions and research institutions worldwide. These agreements support the Company's internal research and development capabilities.

Share-Based Compensation

The Company issues stock-based compensation awards to employees and directors in the form of stock options, restricted stock units (RSUs), performance units (PSUs), market stock units (MSUs) and employee stock purchase plan (ESPP) awards (collectively, awards). The exercise price of stock options granted is equal to the fair market value of the Company's common stock on the date of grant.

The Company measures and recognizes compensation expense for all stock-based awards based on the awards' fair value. Share-based compensation for RSUs and PSUs is measured based on the value of the Company's common stock on the grant date. The Company uses the Monte Carlo simulation model to estimate the grant date fair value of MSUs. Share-based compensation for employee stock options and ESPP awards are measured on the date of grant using a Black-Scholes option pricing model.

Awards vest either on a vesting schedule or in a lump sum. The Company determines the fair value of each award as a single award and recognizes the expense on a straight-line basis over the service period of the award, which is generally the vesting period. Stock options expire ten years from the date of grant.

Share-based compensation expense for stock options, RSUs, PSUs and the ESPP awards is based on awards ultimately expected to vest, and the expense is recorded net of estimated forfeitures. With respect to Performance Stock Units that are based on our corporate financial performance targets, or PSUs, the number of PSUs that will ultimately be awarded is contingent on the Company's actual level of achievement compared to the corporate financial target performance targets. The Company recognizes expense for MSUs net of estimated forfeitures and does not adjust the expense for subsequent changes in the expected outcome of the market-based vesting conditions.

Loss Contingencies

The Company is involved in various lawsuits, claims and proceedings that arise in the ordinary course of business. The Company records a provision for a liability when it believes 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. The Company reviews these provisions quarterly and adjusts these provisions to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and updated information.

Net Income (Loss) Per Common Share

Basic and diluted net income (loss) per share is computed by dividing net income (loss) attributable to stockholders by the weighted average number of common shares outstanding during the year. Potentially dilutive outstanding shares of common stock equivalents were excluded from the computation of diluted net loss per share for loss periods presented because including them would have been antidilutive.

A reconciliation of the numerator and denominator used in the calculation of basic and diluted net income (loss) per share attributable to stockholders follows (in thousands):

	Years Ended June 30,		
	2021	2020	2019
Numerator:			
Net income (loss) used to compute basic and diluted loss per share	$ (6,311)	$ 3,827	$ (16,430)
Denominator:			
Weighted average shares used to compute basic income (loss) per share	92,031	89,874	87,465
Weighted average shares used to compute diluted income (loss) per share	92,031	90,623	87,465

The potentially dilutive shares of the Company's common stock resulting from the assumed exercise of outstanding stock options, the vesting of Restricted Stock Units (RSU), Market Stock Units (MSU) and Performance Stock Units (PSU), and the purchase of shares under the Employee Stock Purchase Program (ESPP), as determined under the treasury stock method, are excluded from the computation of diluted net income (loss) per share when their effect would have been anti-dilutive. Additionally, the outstanding 3.75% Convertible Notes due July 2022 (the "3.75% Convertible Notes due 2022") and the 3.75% Convertible Notes due June 2026 (the "3.75% Convertible Notes due 2026" and together with the 3.75% Convertible Notes due 2022, the "Notes") are included in the calculation of diluted net income per share only if their inclusion is dilutive for periods during which the notes were outstanding.

The following table sets forth all potentially dilutive securities excluded from the computation in the table above when their effect would have been anti-dilutive (in thousands):

	As of June 30,		
	2021	2020	2019
Stock options	7,030	5,956	5,220
RSUs, PSUs and MSUs	3,198	3,761	3,725
	10,228	9,717	8,945

Outstanding Convertible Notes—Diluted Share Impact

Due to the optional cash settlement feature and management's intent to settle the principal amount thereof in cash, the shares of common stock issuable upon conversion of the outstanding principal amount of the 3.75% Convertible Notes due 2022 and 3.75% Convertible Notes due 2026 outstanding as of June 30, 2021, totaling approximately 0.5 million shares and 17.1 million shares of the Company's common stock, respectively, as of June 30, 2021, the effect of adding the shares were antidilutive and were not included in the basic and diluted net loss per common share table above. The shares of common stock issuable upon conversion of the outstanding principal amount of the 3.75% Convertible Notes due 2022 outstanding as of June 30, 2020 and 2019, totaled approximately 14.9 million shares of the Company's common stock and the effect of adding the shares were antidilutive and were not included in the basic and diluted net income (loss) per common share table above.

Leases

On July 1, 2019, the Company adopted Accounting Standards Codification Topic 842, “Leases” (“ASC 842”) to replace the existing lease accounting guidance. This pronouncement is intended to provide enhanced transparency and comparability by requiring lessees to record right-of-use assets and corresponding lease liabilities on the balance sheet for most leases. Expenses associated with leases will continue to be recognized consistent with previous accounting guidance. The Company adopted ASC 842 utilizing the current-period adjustment method, which eliminates the requirement that entities apply the new lease standard to the comparative periods presented in the year of adoption.

The Company is the lessee in a lease contract when the Company obtains the right to use the asset. Operating leases are included in the line items right-of-use asset, lease obligation, current, and lease obligation, long-term in the consolidated balance sheet. Right-of-use asset represents the Company’s right to use an underlying asset for the lease term and lease obligations represent the Company’s obligations to make lease payments arising from the lease, both of which are recognized based on the present value of the future minimum lease payments over the lease term at the commencement date. Leases with a lease term of 12 months or less at inception are not recorded on the consolidated balance sheet and are expensed on a straight-line basis over the lease term in the consolidated statements of operations. The Company determines the lease term by agreement with lessor, including lease renewal and extension. As the leases do not provide an implicit interest rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of future payments.

Equity Method Investment

In 2020, the Company adopted a new accounting policy related to equity method investments in connection with its equity investment in CNNC Accuray (Tianjin) Medical Technology Co. Ltd., the Company’s joint venture in China (the “JV”). The equity method investment that the Company holds in the JV for which the Company has the ability to exercise significant influence over the JV but lacks a controlling financial interest in the investee. The equity method investment is measured at cost and adjusted for impairment, if any, for the Company’s share of the investee's income or loss and intra-entity profits. The Company recognizes its proportionate share of income or loss from the JV on a one-quarter lag due to the timing of the availability of the JV’s financial records. Profit earned by the Company from the JV is eliminated through cost of goods sold until it is realized; such profits would generally be considered realized when the inventory has been sold through to third parties.

Equity method goodwill is not amortized, but is evaluated for impairment on an annual basis and when impairment indicators are present. Our impairment analysis considers qualitative and quantitative factors that may have a significant impact on the investee's fair value. Qualitative factors include the investee's financial condition and business outlook, industry and sector performance, operational and financing cash flow activities, and other relevant factors affecting the investee. When indicators of impairment exist, we prepare quantitative assessments of the fair value of our non-marketable equity investments, which require judgment and the use of estimates, including discount rates, investee revenue and costs, and comparable market data, among others.

Income 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 other deferred tax assets.

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. The Company anticipates that except for $0.02 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.

Accumulated Other Comprehensive Income (Loss)

The components of comprehensive income (loss) consist of net income (loss), changes in foreign currency exchange rate translation and net changes related to a defined benefit pension plan. The changes in foreign currency exchange rate translation and net changes related to the defined benefit pension plan are excluded from earnings and reported as a component of stockholders' equity. The foreign currency translation adjustment results from those subsidiaries not using the United States dollar as their functional currency since the majority of their economic activities are primarily denominated in their applicable local currency. Accordingly, all assets and liabilities related to these operations are translated at the current exchange rates at the end of each period, whereas revenues and expenses are translated at average exchange rates in effect during the period. The resulting cumulative translation adjustments are recorded directly to the accumulated other comprehensive loss account in stockholders' equity.

Note 2. Recent Accounting Pronouncements

Accounting Pronouncement Recently Adopted

In June 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which replaces the current incurred loss impairment methodology with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company adopted this update effective July 1, 2020 and the implementation of this update did not have a material impact on its consolidated financial position, results of operations or cash flows.

In November 2018, the FASB issued ASU 2018-18, Collaborative Arrangements (Topic 808) to clarify revenue accounting for collaborative arrangements entered into with customers. The Company adopted this standard effective July 1, 2020. The adoption of this standard had no impact on our consolidated financial statements and disclosure.

Accounting Pronouncements Not Yet Effective

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740): Simplifying Accounting for Income Taxes ("ASU 2019-12"). The amendments in ASU 2019-12 are intended to simplify various aspects related to accounting for income taxes and reduce the cost of accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. ASU 2019-12 is effective for the Company beginning July 1, 2021 with early adoption permitted. The Company is evaluating the impact of ASU 2019-12, but does not expect adopting this new accounting guidance will have a material impact on its consolidated financial statements.

In January 2020, the FASB issued ASU 2020-01 Investments-Equity Securities (Topic 321), Investments-Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815) - Clarifying the Interactions between Topic 321, Topic 323, and Topic 815. This guidance addresses accounting for the transition into and out of the equity method and provides clarification of the interaction of rules for equity securities, the equity method of accounting, and forward contracts and purchase options on certain types of securities. This standard is effective for fiscal years and interim periods within those fiscal years beginning after December 15, 2020. Early adoption is permitted. The Company does not expect a material impact on the Consolidated Financial Statements upon the adoption of ASU 2020-01, which is effective for the Company in its fiscal year and interim periods beginning on July 1, 2021.

In March 2020, the FASB issued an update ("ASU 2020-04") establishing Accounting Standards Codification ("ASC") Topic 848, Reference Rate Reform. ASU 2020-04 contains practical expedients for reference rate reform related activities that impact debt, leases, derivatives and other contracts. The guidance in ASU 2020-04 is optional

and may be elected over time as reference rate reform activities occur. The Company's New Term Loan Facility and New Revolving Credit Facility applies Eurodollar rate LIBOR to the variable component of the interest rate, if a Benchmark transition event, or an early opt-in election, as applicable occurred a transition to the use of the Secured Overnight Financing Rate ("SOFR") to replace such rate. The Company is currently evaluating the impact of the guidance and our options related to the practical expedients.

In August 2020, the FASB issued Accounting Standards Update No. 2020-06, Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06"). ASU 2020-06 simplifies the accounting for convertible instruments, the accounting for contracts in an entity's own equity, and the related earnings per share calculations. The new standard is effective for fiscal years beginning after December 15, 2021; however, the Company currently plans to early adopt this guidance on July 1, 2021 using the modified retrospective method, which will result in a cumulative-effect adjustment to the opening balance of retained earnings on the date of adoption. Prior period financial statements will not be restated upon adoption.

Upon adoption of ASU 2020-06, the Company expects the following significant accounting changes:

i. *Elimination of the cash conversion model.* Under current GAAP, instruments that may be partially settled in cash are in the scope of the "cash conversion" model, which requires the conversion feature to be separately reported in equity. Under ASU 2020-06, the Company will no longer be required to separately record the conversion feature in equity and instead will account for the convertible instrument as a single unit of debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity under current GAAP will be reclassified to debt and amortized as interest expense. The Company has a full valuation allowance against its net US deferred tax assets and as such there is no associated net deferred tax liability on the Company's consolidated financial statements.

ii. *Use of the "if-converted" method for calculating diluted earnings per share.* Under current GAAP, the Company utilizes the "treasury stock" method for computing the diluted earnings per share impact of its convertible senior notes, as its current intention is to settle the principal amount of the Notes with cash. Under the treasury stock method, only the excess of the average stock price of the Company's common stock for the reporting period over the conversion price is utilized in determining the impact to the diluted earnings per share denominator. Under ASU 2020-06, the Company may no longer rebut the presumption of share settlement for its convertible instrument and therefore may no longer utilize the treasury stock method. Instead, the Company will be required to use the if-converted method, which requires all underlying shares be included in the denominator regardless of the average stock price for the reporting period, in addition to adding back to the numerator the related interest expense from the stated coupon and the amortization of issuance costs, if dilutive.

The Company currently estimates the adoption of ASU 2020-06 will impact the opening consolidated balance sheet as follows (in thousands):

Consolidated Balance Sheet	**June 30, 2021**	**Effect of Adoption ASU 2020-06**	**July 1, 2021 As Adjusted**
Convertible senior notes, net	75,100	24,784	99,884
Additional paid-in-capital	554,680	(25,634)	529,046
Accumulated deficit	(488,024)	850	(487,174)

In October 2020, the FASB issued ASU 2020-10, Codification Improvements - Disclosures. This ASU improves consistency by amending the codification to include all disclosure guidance in the appropriate disclosure sections and clarifies application of various provisions in the codification by amending and adding new headings, cross referencing to other guidance, and refining or correcting terminology. This ASU is effective for fiscal years beginning after December 15, 2020.

In April 2021, the FASB issued ASU 2021-04, which included Topic 260 “Earnings Per Share”. This guidance clarifies and reduces diversity in an issuer’s accounting for modifications or exchanges of freestanding equity-classified written call options due to a lack of explicit guidance in the FASB Codification. The ASU 2021-04 is effective for all entities for fiscal years beginning after December 15, 2021. Early adoption is permitted. The Company is currently evaluating the impact of adopting ASU 2021-04 on its consolidated financial statements.

Note 3. Revenue

Contract Balances

The timing of revenue recognition, billings, and cash collections results in trade receivables, unbilled receivables, and deferred revenues on the consolidated balance sheets. The Company may offer longer or extended payments of more than one year for qualified customers in some circumstances. At times, revenue recognition occurs before the billing, resulting in an unbilled receivable, which represents a contract asset. The contract asset is a component of accounts receivable and other assets for the current and non-current portions, respectively.

When the Company receives advances or deposits from customers before revenue is recognized, this results in a contract liability. It can take up to two and half years from the time of order to revenue recognition due to the Company’s long sales cycle.

Changes in the contract assets and contract liabilities are as follows:

(Dollars in thousands)	June 30, 2021 Amount	June 30, 2020 Amount	Change $	Change %
Assets:				
Unbilled accounts receivable – current (1)	$ 12,354	$ 11,739	615	5
Interest receivable – current (2)	512	493	19	4
Long-term accounts receivable (3)	4,970	3,810	1,160	30
Interest receivable – non-current (3)	1,083	1,342	(259)	(19)
Liabilities:				
Customer advances	24,937	22,571	2,366	10
Deferred revenue – current	81,660	83,207	(1,547)	(2)
Deferred revenue – non-current	23,685	24,125	(440)	(2)

(1) Included in accounts receivable on consolidated balance sheets
(2) Included in prepaid expenses and other current assets on consolidated balance sheets
(3) Included in other assets on consolidated balance sheets

During the years ended June 30, 2021 and June 30, 2020, the Company recognized revenues of $107.3 million and $87.7 million, respectively, which were included in the deferred revenue balances at June 30, 2020 and June 30, 2019, respectively.

Remaining Performance Obligations

Remaining performance obligations represent deferred revenue from open contracts for which performance has already started and the transaction price from executed non-cancelable contracts for which performance has not yet started. Service contracts in general are considered month-to-month contracts.

As of June 30, 2021, total remaining performance obligations amounted to $1,085.7 million. Of this total amount, $76.3 million related to long-term warranty and service, such as non-cancellable post contract services and system warranty, which is expected to be recognized over the remaining service period and warranty period for systems that have been delivered, respectively.

The following table represents the Company's remaining performance obligations related to long-term warranty and non-cancellable post contract services as of June 30, 2021 and the estimated revenue expected to be recognized (the time bands reflect management's best estimate of when the Company will transfer control to the customer and may change based on timing of shipment, readiness of customers' facilities for installation, installation requirements, and availability of products). The Company has elected the practical expedient to not disclose the unsatisfied performance obligations for contracts with an original expected duration of one year or less:

	Fiscal years of revenue recognition			
(Dollars in thousands)	2022	2023	2024	Thereafter
Long-term warranty and service	$ 33,479	$ 23,042	$ 10,135	$ 9,665

For the remaining $1,009.4 million of performance obligations, the Company estimates 20% to 27% will be recognized in the next 12 months, and the remaining portion will be recognized thereafter. The Company's historical experience indicates that some of its customers will cancel or renegotiate contracts as economic conditions change or when product offerings change during the long sales cycle. Based on historical experience, approximately 26% of the Company's $1,009.4 million open contracts may never result in revenue due to cancellation.

Capitalized Contract Costs

As of June 30, 2021 and 2020, the balance of capitalized costs to obtain a contract was $8.9 million and $7.9 million, respectively. The Company has classified the capitalized costs to obtain a contract as a component of prepaid expenses and other current assets and other assets with respect to the current and non-current portions of capitalized costs, respectively, on the consolidated balance sheets. The Company incurred a $0.6 million and $1.2 million impairment loss for the years ended June 30, 2021 and 2020, respectively. During the years ended June 30, 2021 and 2020 the Company recognized $2.8 million and $1.9 million, respectively, in expense related to the amortization of the capitalized contract costs.

Note 4. Supplemental Financial Information

Consolidated Balance Sheet

Accounts receivable, net

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

	June 30, 2021	June 30, 2020
Accounts receivable	$ 74,054	$ 80,128
Unbilled fees and services	12,354	11,739
	86,408	91,867
Less: Allowance for credit losses	(1,048)	(1,268)
Accounts receivable, net	$ 85,360	$ 90,599

The Company received payment or had credits of $0.8 million, added $0.7 million and wrote off $0.2 million from the allowance for credit losses in fiscal 2021. The Company received payment or had credits of $0.4 million, added $1.2 million and wrote off $0.1 million from the allowance for credit losses in fiscal 2020.

Financing receivables

A financing receivable is a contractual right to receive money, on demand or on fixed or determinable dates, that is recognized as an asset in the Company's balance sheet. The Company's financing receivables, consisting of its accounts receivable with contractual maturities of more than one year, totaled $3.4 million and $3.8 million at June 30, 2021 and 2020, respectively, and are included in Other Assets in the consolidated balance sheets. The Company evaluates the credit quality of a customer at contract inception and monitors credit quality over the term of the underlying transactions. The Company performs a credit analysis for all new customers and reviews payment history, current order backlog, financial performance of the customers and other variables that augment or mitigate the inherent credit risk of a particular transaction. Such variables include the underlying value and liquidity of the collateral, the essential use of the equipment, the contract term and the inclusion of credit enhancements, such as guarantees, letters of credit or security deposits. The Company classifies accounts as high risk when it considers the financing receivable to be impaired or when management believes there is a significant near-term risk of non-payment. The Company performed an assessment of the allowance for credit losses related to its financing receivables. Based upon such assessment, the Company recorded adjustments of $3.4 million and $0.8 million to the allowance for credit losses related to such financing receivables during the years ended June 30, 2021 and 2020, respectively.

A summary of the Company's financing receivables is presented as follows (in thousands):

	June 30, 2021	June 30, 2020
Financing receivable	$ 7,102	$ 11,245
Allowance for credit losses	(943)	(4,369)
Total, net	$ 6,159	$ 6,876
Reported as:		
Current	$ 2,772	$ 3,084
Non-current	3,387	3,792
Total, net	$ 6,159	$ 6,876

The Company added $0.2 million and wrote off $3.6 million from the allowance for credit losses in fiscal year 2021. The Company added $0.8 million in fiscal year 2020.

Actual cash collections may differ from the contracted maturities due to early customer buyouts, refinancing, or defaults.

Inventories, net

Inventories consisted of the following (in thousands):

	June 30, 2021	June 30, 2020
Raw materials	$ 45,301	$ 48,037
Work-in-process	22,014	17,798
Finished goods	58,614	68,539
Inventories, net	$ 125,929	$ 134,374

Property and Equipment, net

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

	June 30, 2021	June 30, 2020
Furniture and fixtures	$ 1,636	$ 1,961
Computer and office equipment	8,972	10,896
Software	7,477	11,606
Leasehold improvements	26,102	26,206
Machinery and equipment	45,265	48,830
Construction in progress	1,055	623
	90,507	100,122
Less: Accumulated depreciation	(78,175)	(84,773)
Property and equipment, net	$ 12,332	$ 15,349

Depreciation and amortization expense related to property and equipment for the years ended June 30, 2021, 2020 and 2019 was $6.2 million, $7.3 million and $8.1 million, respectively.

Accumulated Other Comprehensive Income (Loss)

The following table summarizes the changes in accumulated other comprehensive income (loss) by component (in thousands):

	Foreign Currency Items	Change in Defined Pension Benefit Obligation	Total
Balance at June 30, 2019	$ 990	$ (1,000)	$ (10)
Other comprehensive loss	(238)	(236)	(474)
Balance at June 30, 2020	$ 752	$ (1,236)	$ (484)
Other comprehensive loss	1,705	872	2,577
Balance at June 30, 2021	$ 2,457	$ (364)	$ 2,093

Consolidated Statements of Operations

Other expense, net consisted of the following (in thousands):

	Years Ended June 30,		
(in thousands)	2021	2020	2019
Interest expense	$ (16,893)	$ (18,080)	(15,084)
Foreign currency transaction loss	(1,953)	(2,343)	(665)
Gain on contribution to joint venture	—	12,964	—
Loss on Debt Extinguishment	(9,948)	—	—
Other expense, net	1,128	759	822
Total other expense, net	$ (27,666)	$ (6,700)	$ (14,927)

Note 5. Leases

The Company adopted ASC 842 – Leases using the current period adjustment method beginning on July 1, 2019. Under this approach, the Company did not restate its comparative amounts and recognized a right-of-use asset equal to the present value of the future lease payments. The Company elected to apply the practical expedient that allows

for not reassessing: (1) whether any expired or existing contracts are or contain leases, (2) the lease classification for any expired or existing leases and (3) initial direct costs for any expired or existing leases. The practical expedient applied to transition contracts that were previously identified as leases and elected to not recognize right-of-use assets and lease obligations for leases of low value assets.

The Company has operating leases for corporate offices and warehouse facilities worldwide. Additionally, the Company leases cars, copy machines and laptops through various operating leases. For some leases the Company has entered into non-cancelable operating lease agreements with various expiration dates through June 2026. Certain lease agreements include options to renew or terminate the lease, which are not reasonably certain to be exercised and therefore are not factored into the determination of lease payments.

Operating lease costs for the twelve months ended June 30, 2021 and 2020 were $9.1 million and $9.5 million, respectively, not including short-term operating lease costs for the twelve months ended June 30, 2021 and 2020 of $0.2 million and $0.5 million, respectively.

For the twelve months ended June 30, 2021 and 2020, cash paid for amounts included in the measurement of operating lease liabilities was approximately $9.7 million and $9.5 million, respectively. Operating lease liabilities arising from obtaining operating right-of-use assets totaled $1.1 million and $5.2 million, respectively for the years ended June 30, 2021 and 2020.

Operating lease right-of-use assets and operating lease obligation are represented in the table below (in thousands):

	June 30, 2021	June 30, 2020
Beginning balance operating lease right-of-use asset (1)	$ 28,647	$ 30,578
Lease asset added	1,069	5,244
Amortization for the year	(7,194)	(7,175)
Ending balance operating lease right-of-use asset	$ 22,522	$ 28,647
Beginning balance operating lease obligation (1)	$ 32,397	$ 34,465
Lease liability added	1,069	5,244
Repayment and interest accretion	(7,857)	(7,312)
Ending balance operating lease obligation	$ 25,609	$ 32,397
Current portion of operating lease obligation	$ 8,169	$ 8,224
Noncurrent portion of operating lease obligation	$ 17,441	$ 24,173

(1) June 30, 2020 beginning balance represents ASU 842 date of adoption as of July 1, 2019.

Maturities of operating lease liabilities as of June 30, 2021 are presented in the table below (in thousands):

-

Year Ending June 30,	Amount
2022	$ 9,564
2023	8,906
2024	6,148
2025	3,163
2026	5
Total operating lease payments	27,786
Less: imputed interest	(2,177)
Present value of operating lease liabilities	$ 25,609

The weighted average remaining lease term for the Company's operating leases was 3.09 years and the weighted average discount rate was 5.39% as of June 30, 2021.

Note 6. Goodwill and Purchased Intangible Assets

Goodwill

Goodwill as of June 30, 2021 and 2020 and changes in the carrying amount of goodwill for the respective periods are as follows (in thousands):

	As of June 30,	
	2021	2020
Balance at the beginning of the period	$ 57,717	$ 57,770
Currency translation adjustment	243	(53)
Balance at the end of the period	$ 57,960	$ 57,717

In fiscal year 2021, the Company performed its annual goodwill impairment test and determined that there was no impairment to goodwill. The Company will continue to monitor its recorded goodwill for indicators of impairment.

Purchased Intangible Assets

The Company's intangible assets associated with purchased patent license are as follows (in thousands):

		As of June 30, 2021			As of June 30, 2020		
	Useful Lives (in years)	Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Amortization	Net Amount
Patent license	2 - 7	$ 1,170	$ (735)	$ 435	$ 1,170	$ (507)	$ 663

During fiscal year 2017, the Company purchased a patent license with a useful life of seven years. During the fiscal year 2020 the Company purchased a patent license for $170 thousand with a useful life of two years. The Company did not identify any triggering events that would indicate potential impairment of its definite-lived intangible and long-lived assets as of June 30, 2021 and 2020.

Amortization expense related to purchased intangible assets was $0.2 million, $0.2 million and $0.1 million for the years ended June 30, 2021, 2020 and 2019, respectively.

The estimated future amortization expense of purchased intangible assets as of June 30, 2021 is as follows (in thousands):

Year Ending June 30,	Amount
2022	$ 185
2023	143
2024	107
2025	—
	$ 435

Note 7. Derivative Financial Instruments

The Company utilizes foreign currency forward contracts with reputable financial institutions to manage its exposure of fluctuations in foreign currency exchange rates on certain intercompany balances and foreign currency denominated cash, customer receivables and liabilities. The Company does not use derivative financial instruments for speculative or trading purposes. These forward contracts are not designated as hedging instruments for accounting purposes. Principal hedged currencies include the Euro, Japanese Yen, Swiss Franc, and U.S. Dollar. The periods of these forward contracts range up to approximately three months and the notional amounts are intended to be consistent with changes in the underlying exposures. The Company intends to exchange foreign currencies for U.S. Dollars at maturity.

The Company enters into forward currency exchange contracts to hedge its overseas operating expenses and other liabilities when deemed appropriate. As of June 30, 2021 and 2020, the Company had the following outstanding forward currency exchange contracts (in notional amount):

	As of June 30,	
(In thousands and U.S. dollars)	**2021**	**2020**
Canadian Dollar	$ 527	$ —
Swiss Franc	8,891	—
Chinese Yuan	1,927	—
Euro	19,037	—
British Pound	3,191	—
Indian Rupee	7,825	—
Japanese Yen	12,803	—
	$ 54,201	$ —

The Company entered into the foreign exchange forward contract on June 30, 2021 and there was no impact on balance sheet.

The following table shows the effect of forward contracts not designated as hedging instruments and foreign currency transactions gains and losses, which were included in “Other expense, net” on the consolidated statements of operations in fiscal years (in thousands):

	Years ended June 30,		
	2021	**2020**	**2019**
Foreign currency exchange gain (loss) on forward contracts	$ (2,349)	$ 744	$ 17
Foreign currency transactions gain (loss)	396	(3,087)	(682)

Note 8. Fair Value Measurements

Fair value is an exit price representing the amount that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy contains three levels of inputs that may be used to measure fair value, as follows:

Level 1— Unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date.

Level 2— Other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly, including:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets in non-active markets;

- Inputs other than quoted prices that are observable for the asset or liability; and
- Inputs that are derived principally from or corroborated by other observable market data.

Level 3— Unobservable inputs that cannot be corroborated by observable market data and require the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management's estimates of market participant assumptions.

Assets and Liabilities That Are Measured at Fair Value on a Nonrecurring Basis

At June 30, 2021 the Company had open currency forward contracts to purchase or sell foreign currencies with a stated, or notional, value of approximately $54.2 million. The fair value of the underlying currency based upon the June 30, 2021 exchange rate was approximately $54.2 million, which it considers to be a Level 2 fair value measurement.

The Company's debt is measured on a non-recurring basis using Level 2 inputs based upon observable inputs of the Company's underlying stock price and the time value of the conversion option, since an observable quoted price of the Notes is not readily available.

The New Revolving Credit Facility and the New Term Loan Facility (collectively, the "New Credit Facilities") are valued at market interest rates, which it considers to be a Level 2 fair value measurement. The Company believes that the carrying value of these financial instruments approximates its estimated fair value based on consideration of effective interest rates and available interest to the Company based on the recent debt transactions.

The following table summarizes the carrying value and estimated fair value of the New Credit Facilities and Notes (in thousands):

	June 30, 2021		June 30, 2020	
	Carrying Value	Fair Value	Carrying Value	Fair Value
3.75% Convertible Notes Due 2022	$ 2,712	$ 3,164	$ 76,398	$ 65,272
3.75% Convertible Notes Due 2026	72,388	108,163	—	—
New Term Loan Facility	78,697	78,697	84,908	84,908
New Revolving Credit Facility	20,000	20,000	28,001	28,001
Total	$ 173,797	$ 210,024	$ 189,307	$ 178,181

Note 9. Commitments and Contingencies

Long-term Debt Commitments

The Company is required to make semi-annual interest payments on the 3.75% Convertible Notes due 2022 and 3.75% Convertible Notes due 2026, and monthly interest payments on the New Revolving Credit Facility and New Term Loan Facility. See Note 10, *Debt*, for details.

Future minimum long-term principal and interest on the Notes and New Credit Facilities as of June 30, 2021 are as follows (in thousands):

Year Ending June 30,	Long-Term Debt (1)
2022	$ 11,424
2023	16,018
2024	12,944
2025	14,696
2026	181,712
Total	$ 236,794

(1) These amounts represent principal and interest cash payments over the contractual life of the debt obligations, including anticipated interest payments that are not recorded on the Company's consolidated balance sheet. Any conversion, premium, redemption or purchase of the Notes that would impact cash payments noted in the preceding table.

Purchase Commitments

The Company's purchase commitments and obligations include all open purchase orders and contractual obligations in the ordinary course of business, including commitments with contract manufacturers and suppliers, for which the Company has not received the goods or services and acquisition and licensing of intellectual property. A majority of these purchase obligations are due within a year. Although open purchase orders are considered enforceable and legally binding, the terms generally allows the Company the option to cancel, reschedule, and adjust its requirements based on the Company's business needs prior to the delivery of goods or performance of services, and hence, these purchase orders have not been included in the table above.

Indemnities and Commitments

The Company enters into standard indemnification agreements with its landlords and all superior mortgagees and their respective directors, officers' agents, and employees in the ordinary course of business. Pursuant to these agreements, the Company will indemnify, hold harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the landlords, in connection with any loss, accident, injury, or damage by any third-party with respect to the leased facilities. The term of these indemnification agreements is from the commencement of the lease agreements until termination of the lease agreements. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, historically the Company has not incurred claims or costs to defend lawsuits or settle claims related to these indemnification agreements. The Company has not recorded any liability associated with its indemnification agreements as it is not aware of any pending or threatened actions that represent probable losses as of June 30, 2021.

Guarantees

As of June 30, 2021, the Company had various bank guarantees totaling approximately $1.2 million related to a bidding process with various customers. As of June 30, 2020, the Company had bank guarantees totaling approximately $1.0 million related to a bidding process with three customers.

Royalty Agreement

The Company has an exclusive license agreement with the Wisconsin Alumni Research Foundation (WARF), to make, use, sell and otherwise distribute products under certain of WARF's patents anywhere in the world. The Company is required to pay WARF a royalty for each TomoTherapy System sold that includes the licensed technology. The license agreement expires upon expiration of the patents and may be terminated earlier if the Company so elects. The license agreement expired on August 6, 2019 as a result of the expiration of the patent.

The Company recorded royalty costs of $1.9 million, $2.5 million and $3.8 million for the years ended June 30, 2021, 2020 and 2019, respectively, which were recorded in cost of revenue or deferred cost of revenue. The

Company had approximately $2.3 million and $2.6 million accrued liabilities at June 30, 2021 and 2020, respectively, related to this agreement.

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 not recorded any liability associated with this indemnification, as it is not aware of any pending or threatened actions that represent probable losses as of June 30, 2021.

Litigation

From time to time, the Company is involved in legal proceedings arising in the ordinary course of its business. The Company records a provision for a loss when it believes that it is both probable that a loss has been incurred and the amount can be reasonably estimated. Currently, management believes the Company does not have any probable and reasonably estimable losses related to any current legal proceedings and claims. Although occasional adverse decisions or settlements may occur, management does not believe that an adverse determination with respect to any of these claims would individually or in the aggregate materially and adversely affect the Company's 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 that could have a material impact on its results of operations, financial position and cash flows.

Note 10. Debt

3.75% Convertible Senior Notes due July 2022

In August 2017, the Company issued $85.0 million aggregate principal amount of its 3.75% Convertible Senior Notes due 2022 (the "3.75% Convertible Notes due 2022") under an indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. $53.0 million aggregate principal amount of the 3.75% Convertible Notes due 2022 were issued to certain holders of the Company's then outstanding 3.50% Convertible Notes due 2018 and 3.50% Series A Convertible Notes due 2018 (together, the "Prior Existing Notes") in exchange for approximately $47.0 million aggregate principal amount of the Prior Existing Notes and $32.0 million aggregate principal amount of the 3.75% Convertible Notes due 2022 were issued to certain other qualified new investors for cash. The net proceeds of the cash issuance were used to repurchase approximately $28.0 million of Prior Existing Notes.

Holders of the 3.75% Convertible Notes due 2022 may convert their notes at any time on or after April 15, 2022 until the close of the business day immediately preceding the maturity date. Prior to April 15, 2022, holders of the 3.75% Convertible Notes due 2022 may convert their notes only under certain circumstances.

Upon conversion, the Company will have the right to pay cash, or deliver shares of common stock of the Company or a combination thereof, at the Company's election. The initial conversion rate is 174.8252 shares of the Company's common stock per $1,000 principal amount (which represents an initial conversion price of approximately $5.72 per share of the Company's common stock). The conversion rate, and thus the conversion price, is subject to adjustment as further described below.

Holders of the 3.75% Convertible Notes due 2022 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 3.75% Convertible Notes due 2022 may require the Company to purchase all or a portion of their note

at a fundamental change repurchase price equal to 100% of the principal amount of the 3.75% Convertible Notes due 2022, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date.

In May 2021, the Company exchanged approximately $82.1 million aggregate principal amount of 3.75% Convertible Notes due 2022 for approximately $97.1 million aggregate principal amount of 3.75% Convertible Notes due 2026. As of June 30, 2021, $2.9 million aggregate principal amount of 3.75% Convertible Notes due 2022 was outstanding. The exchange was treated as extinguishment of debt. The Company recorded a loss on the extinguishment of debt of $4.3 million, primarily comprised of the write-off of deferred costs associated with the 3.75% Convertible Note due 2022 and the extinguishment of the equity component of $14.5 million recognized as reduction to additional paid in capital. The $14.5 million, which is the difference between the settlement consideration paid of $96.0 million and the fair value of the liability component of $81.5 million, represents the estimated fair value of the liability component based on the expected future cash flows associated with the aggregate principal amount of $82.1 million in 3.75% Convertible Notes due 2022.

3.75% Convertible Senior Notes due July 2026

In May 2021, the Company issued $100.0 million aggregate principal amount of its 3.75% Convertible Senior Notes due 2026 (the "3.75% Convertible Notes due 2026") under an indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. $97.1 million aggregate principal amount of the 3.75% Convertible Notes due 2026 were issued to certain holders of the Company's outstanding 3.75% Convertible Notes due 2022 in exchange for approximately $82.1 million aggregate principal amount of 3.75% Convertible Notes due 2022 and $2.9 million of 3.75% Convertible Notes due 2026 were issued to certain other qualified new investors for cash (such transactions the "Exchange and Subscription Transactions").

Holders of the 3.75% Convertible Notes due 2026 may convert their notes at any time on or after March 6, 2026 until the close of the business day immediately preceding the maturity date. Prior to June 6, 2026, holders of the 3.75% Convertible Notes due 2026 may convert their notes only under certain circumstances.

Upon conversion, the Company will have the right to pay cash, or deliver shares of common stock of the Company or a combination thereof, at the Company's election. The initial conversion rate is 170.5611 shares of the Company's common stock per $1,000 principal amount (which represents an initial conversion price of approximately $5.86 per share of the Company's common stock). The conversion rate, and thus the conversion price, is subject to adjustment as further described below.

Holders of the 3.75% Convertible Notes due 2026 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 3.75% Convertible Notes due 2026 may require the Company to purchase all or a portion of their note at a fundamental change repurchase price equal to 100% of the principal amount of the 3.75% Convertible Notes due 2026, plus accrued and unpaid interest, if any, to, but not including, the fundamental change repurchase date. As of June 30, 2021, $100.0 million aggregate principal amount of 3.75% Convertible Notes due 2026 was outstanding.

The aggregate principal amount of $100.0 million, including $2.9 million which were issued to new qualified investors for cash in the 3.75% Convertible Notes due 2026, was allocated between liability component of $74.1 million and equity component of $25.9 million recognized as addition paid in capital, reduced by $0.7 million of 3.75% Convertible Notes due 2026 issuance cost allocated to additional paid in capital.

Prior Revolving Credit Facility

On June 14, 2017, the Company entered into a credit and security agreement with a lender (the "Prior Credit Agreement"). The Prior Credit Agreement provided the Company with a revolving credit facility in the initial amount of $52.0 million (the "Prior Revolving Credit Facility"). Availability for borrowings under the Prior Revolving Credit Facility was subject to a borrowing base that was calculated as a function of the value of the Company's eligible accounts receivable and eligible inventory, and the Company was required to maintain a minimum drawn balance of at least 30% of such availability. Interest on the borrowings under the Prior Revolving Credit Facility was payable monthly in arrears at an annual interest rate of reserve-adjusted, 90-day LIBOR plus 4.50% and had initial maturity date of June 14, 2021.

In December 2017, concurrently with the Prior Term Loan Agreement (as defined below), the Company entered into an amendment to the Credit Agreement (the "Prior Amendment" and, collectively with the Prior Credit Agreement, the "Amended Prior Credit Agreement"). The Prior Amendment reduced the maximum borrowings under the Prior Revolving Credit Facility to $32.0 million and extended the maturity date of the Prior Revolving Credit Facility to December 15, 2022.

In May 2019, the Company amended the Amended Prior Credit Agreement to, among other things, decrease the interest rate from 90-day LIBOR plus 4.50% to 90-day LIBOR plus 3.50% and extend the maturity date to May 30, 2024 and update the calculation of the deferred revolving loan origination fee such that it is based on the amount of time elapsed from the effective date of the May 2019 amendment. The Company accounted for the amendment as a modification of existing debt and deferred an insignificant amount of offering costs on the consolidated balance sheet as of June 30, 2019. The Amended Prior Credit Agreement was further amended in August 2019 to, among other things, revise or add financial covenants, including the fixed charge coverage ratio, minimum net revenue, minimum consolidated cash balance and minimum consolidated domestic cash balance tests. Other significant terms remained unchanged. The Company accounted for the amendment as a modification of existing debt and deferred an insignificant amount of offering costs on the consolidated balance sheet.

On May 6, 2021, the Company entered into an amendment to the Amended Prior Credit Agreement to amend the Prior Revolving Credit Facility to, among other things and subject to certain conditions, permit the Company to consummate the Exchange and Subscription Transactions and related agreements. On May 14, 2021, the initial borrowings under the New Credit Agreement (as defined below), plus available cash on hand, were used to repay all outstanding obligations and terminate all commitments under the Amended Prior Credit Agreement. The Prior Revolving Credit Facility was terminated on May 14, 2021. The Company incurred a loss on the extinguishment of debt as a result of repaying all amounts outstanding on the Prior Revolving Credit Facility. The loss on the extinguishment of debt of $1.4 million was primarily comprised of the write-off of deferred costs associated with the Prior Credit Facilities.

Prior Term Loan

In December 2017, the Company entered into a credit and security agreement with a lender (the "Prior Term Loan Agreement"). The Prior Term Loan Agreement provided for an initial term loan of $40.0 million with an additional tranche of $20.0 million undrawn and available through December 31, 2018, if specified conditions were met (the "Prior Term Loan"). In connection with the Prior Amendment, the Company used a portion of the net proceeds from the initial advance to repay a portion of the outstanding borrowings under the Prior Revolving Credit Facility. Interest on the Prior Term Loan was payable monthly in arrears at an annual interest rate of 6.75% plus 90-day LIBOR. The Prior Term Loan Agreement matures December 15, 2022 and, if prepaid, had fees equal to 3%, 2%, and 1% of the prepayment amount if such termination occurred within the first year, the second year, and the third year of funding, respectively. The term of the loan was 60 months with interest only for the first 24 months followed by straight-line amortization of principal for the remaining months. In addition, the Company paid an annual administrative fee of 0.25% and a final payment of 4.0% of the Prior Term Loan amount.

In December 2018, the Company drew an additional $5.0 million under the Prior Term Loan Agreement and in connection therewith entered into the second amendment to the Prior Term Loan Agreement ("Prior Amendment 2") which, among other things, (i) extended the term loan tranche 2 commitment termination date for the remaining $15.0 million unfunded commitment from December 31, 2018 to June 30, 2019; (ii) provided that term loan tranche 2 may be drawn in two separate advances; and (iii) updated the calculation of the prepayment fee such that it is based on the amount of time elapsed from the effective date of Prior Amendment 2.

In May 2019, the Company amended the Prior Term Loan Agreement to, among other things, increase the loan tranche 2 commitment by $0.5 million, extend the maturity date to May 30, 2024, decrease the annual interest rate from 6.75% plus 90-day LIBOR to 5.50% plus 90-day LIBOR, and modify the calculation prepayment fee such that it is based on the amount of time elapsed from the effective date of the May 2019 amendment. The Company accounted for the amendment as a modification of existing debt and recorded approximately $1.5 million of debt discount costs associated with the amendment against long-term debt on the consolidated balance sheets as of June 30, 2019.

In August 2019, the Company amended the Prior Term Loan Agreement to, among other things, increase the loan commitment by $25 million in the form of a new tranche (“Tranche 3”), increase the annual interest rate from 5.50% plus 90-day LIBOR to 6.75% plus 90-day LIBOR, and revise or add financial covenants, including the fixed charge coverage ratio, minimum net revenue, minimum consolidated cash balance and minimum consolidated domestic cash balance tests. Other significant terms remain unchanged. The Company borrowed in full Tranche 3, or $25 million, on the date of the amendment. The Company accounted for the amendment as a modification of existing debt, at the same time, the Company recorded approximately $1.6 million of debt discount costs associated with the amendment against long-term debt.

On May 6, 2021, the Company entered into an amendment to the Prior Term Loan Agreement to amend the Prior Term Loan Facility to, among other things and subject to certain conditions, permit the Company to consummate the Exchange and Subscription Transactions and related agreements. On May 14, 2021, the initial borrowings under the New Credit Agreement (as defined below), plus available cash on hand, were used to repay all outstanding obligations and terminate all commitments under the Prior Term Loan Agreement. The Prior Term Loan Facility was terminated on May 14, 2021. The Company incurred a loss on the extinguishment of debt as a result of repaying all amounts outstanding on the Prior Term Loan Facility. The loss on the extinguishment of debt of $4.3 million was primarily comprised of the write-off of deferred costs associated with the Prior Credit Facilities.

New Credit Facilities

On May 6, 2021, the Company entered into a senior secured credit agreement (the “New Credit Agreement”) with Silicon Valley Bank, individually as a lender and agent (“Agent”), and the other lenders from time to time parties thereto (together with Silicon Valley Bank as a lender, the “Lenders”), which provides for a new five-year $80 million term loan (the “New Term Loan Facility”) and a $40 million revolving credit facility (the “New Revolving Credit Facility” and, together with the New Term Loan Facility, the “New Credit Facilities”). The initial borrowings under the New Credit Agreement, including $25 million under the New Revolving Credit Facility, were funded on May 14, 2021.

Interest on the borrowings under the New Credit Facilities is payable in arrears on the applicable interest payment date at an annual interest rate of reserve-adjusted, 90-day LIBOR (subject to a 0.50% floor) plus, initially, 3.00% and after the Agent receives copies of the consolidated financial statements of the Company for the fiscal quarter ending June 30, 2021: 3.25% if the Consolidated Senior Net Leverage Ratio (as defined in the New Credit Agreement) is greater than or equal to 3.00:1.00; 3.00% if the Consolidated Senior Net Leverage Ratio is greater than or equal to 2.00:1.00 but less than 3.00:1.00; 2.75% if the Consolidated Senior Net Leverage Ratio is greater than or equal to 1.00:1.00 but less than 2.00:1.00; and 2.50% if the Consolidated Senior Net Leverage Ratio is less than 1.00:1.00. The New Credit Agreement requires the Company to pay the Lenders an unused commitment fee equal to, initially, 0.35% per annum of the average unused portion of the New Revolving Credit Facility and after the Agent receives copies of the consolidated financial statements of the Company for the fiscal quarter ending June 30, 2021: 0.40% per annum of the average unused portion of the Revolving Credit Facility if the Consolidated Senior Net Leverage Ratio is greater than or equal to 3.00:1.00; 0.35% per annum of the average unused portion of the New Revolving Credit Facility if the Consolidated Senior Net Leverage Ratio is greater than or equal to 2.00:1.00 but less than 3.00:1.00; 0.30% per annum of the average unused portion of the New Revolving Credit Facility if the Consolidated Senior Net Leverage Ratio is greater than or equal to 1.00:1.00 but less than 2.00:1.00; and 0.25% per annum of the average unused portion of the New Revolving Credit Facility if the Consolidated Senior Net Leverage Ratio is less than 1.00:1.00. If all or a portion of the loans under the New Term Loan Facility are prepaid, then the Company will be required to pay a fee equal to 1% of the of the aggregate amount of the loans so prepaid, subject to certain exceptions.

The New Credit Agreement contains restrictions and covenants applicable to the Company and its subsidiaries. Among other requirements, the Company may not permit the Fixed Charge Coverage Ratio (as defined in the New Credit Agreement) to be less than a certain specified ratio for each fiscal quarter during the term of the New Credit Agreement or the Consolidated Senior Net Leverage Ratio to be greater than a certain specified ratio for each fiscal quarter during the term of the New Credit Agreement.

The New Credit Agreement also contains customary covenants that limit, among other things, the ability of the Company and its subsidiaries to (i) incur indebtedness, (ii) incur liens on their property, (iii) pay dividends or make

other distributions, (iv) sell their assets, (v) make certain loans or investments, (vi) merge or consolidate, (vii) voluntarily repay or prepay certain indebtedness and (viii) enter into transactions with affiliates, in each case subject to certain exceptions. The New Credit Agreement contains customary representations and warranties and events of default.

As of June 30, 2021, $20.0 million of aggregate principal amount was outstanding under the New Revolving Credit Facility, $80 million aggregate principal amount was outstanding under the New Term Loan Facility and $1.3 million of associated unamortized debt costs.

The following table presents the carrying value of the New Credit Facilities and the Notes (in thousands):

	Revolving Credit Facility	3.75% Convertible Notes due 2022	3.75% Convertible Notes due 2026	Term Loan Facility	Total
Carrying amount of equity conversion component	$ —	$ 134	$ 25,944	$ —	$ 26,078
Principal amount	$ 20,000	$ 2,865	$ 100,000	$ 80,000	$ 202,865
Unamortized debt costs	—	(34)	(2,175)	(1,303)	(3,512)
Unamortized debt discount	—	(119)	(25,437)	—	(25,556)
Net carrying amount	$ 20,000	$ 2,712	$ 72,388	$ 78,697	$ 173,797
Reported as:					
Short-term debt					$ 3,790
Long-term debt					170,007
Total debt					$ 173,797

A summary of interest expense on the New Credit Facilities and the Notes is as follows (in thousands):

	Year ended June 30,		
	2021	2020	2019
Interest expense related to contractual interest coupon	$ 10,590	$ 12,373	$ 10,185
Interest expense related to amortization of debt discount	4,887	4,168	3,370
Interest expense related to amortization of debt issuance costs	1,356	1,350	1,529
Interest expense related to extinguishment of debt	9,948	—	—
Total	$ 26,781	$ 17,891	$ 15,084

Note 11. Shareholders' Equity

At June 30, 2021, the Company had 10.2 million shares of common stock reserved for issuance under the stock incentive plans and the employee stock purchase plan.

Share Repurchase

On May 5, 2021, the Board of Directors authorized a repurchase of an aggregate amount of the Company common stock not to exceed $18 million. On May 7, 2021, the Company completed a repurchase of 3,108,369 shares of its common stock for an aggregate amount of $14.1 million. Repurchased shares are reclassified as authorized and issued shares of common stock. The Company's common stock is reduced by an amount equal to the number of shares being repurchased multiplied by the par value of such shares. The excess amount that is repurchased over its par value is first allocated as a reduction to additional paid-in capital based on the initial public offering price of the Company's common stock.

Note 12. Stock Incentive Plan and Employee Stock Purchase Plan

As of June 30, 2021, the Company had three outstanding stock incentive plans: the 2016 Equity Incentive Plan, or the 2016 Plan; the 2007 Incentive Award Plan, or the 2007 Plan; and the 1998 Stock Incentive Plan, or the 1998 Plan. The 2016 Plan permits the granting of stock options, stock appreciation rights, restricted stock awards, performance shares, performance units, and restricted stock units, or RSUs. The vesting of RSUs granted under the 2016 Plan are primarily service-based (over the requisite service period) while the vesting of performance units granted under the 2016 Plan are primarily performance-based, or PSUs, or market-based, or MSUs. Only employees of the Company are eligible to receive incentive stock options. Non-employees may be granted non-qualified stock options.

Stock options granted under the 2016 Plan have an exercise price of at least 100% of the fair market value of the underlying stock on the grant date. The stock options have 10 year contractual terms and generally become exercisable for 25% of the option shares one year from the date of grant and then ratably over the following 36 months. Service-based RSUs granted under the equity plans generally vest 25% of the share units covered by the grant on each of the first through fourth anniversaries of the date of the grant, subject to the continued service of the grantee through each such date. However, certain of the outstanding RSUs under our equity plans vest 50% upon the first anniversary year of the grant date, and 50% upon the second anniversary year of the grant date. The Board of Directors has the discretion to use different vesting schedules.

As of June 30, 2021, the 2007 Plan and the 1998 Plan each continued to remain in effect; however, the Company can no longer grant equity awards under such plans.

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

	Years ended June 30,		
	2021	2020	2019
Cost of revenue	$ 1,296	$ 1,244	$ 1,666
Research and development	1,348	1,457	1,773
Selling and marketing	1,457	1,159	2,081
General and administrative	5,231	4,292	5,081
Total	$ 9,332	$ 8,152	$ 10,601

The amount of capitalized share-based compensation costs as components of inventory was insignificant at June 30, 2021, 2020 and 2019.

Stock Options

The fair value of each option is estimated at the date of grant using the Black-Scholes option pricing formula with the following assumptions:

	Years Ended June 30,		
	2021	2020	2019
Risk–free interest rate	0.59% - 1.27%	1.14% - 1.53%	1.94% - 2.81%
Dividend yield	—%	—%	—%
Expected term	6.72 - 6.88	5.63 - 5.64	5.31 - 5.51
Expected volatility	54.7% - 55.6%	47.3% - 48.9%	47.0% - 47.1%

Determining Fair Value of Stock Options

The fair value of each grant of stock options was determined by the Company using the methods and assumptions discussed below. Each of these inputs is subjective and generally requires significant judgment to determine.

Valuation and Amortization Method—The Company estimates the fair value of its stock options using the Black-Scholes option-pricing model. This fair value is then amortized over the requisite service periods of the awards.

Expected Term—The Company estimates the expected term of stock option by taking the average of the vesting term and the contractual term of the option, as illustrated by the simplified method.

Expected Volatility—The expected volatility is derived from the Company's historical stock volatility over a period approximately equal to the expected term of the options.

Risk-Free Interest Rate—The risk-free interest rate is based on the U.S. Treasury yield curve on the date of grant.

Dividend Yield—The dividend yield assumption is based on the Company's history and expectation of no dividend payouts.

A summary of option activity under the Company's incentive plan during the fiscal years is presented below (in thousands except per share and term amounts):

	Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (In Years)	Aggregate Intrinsic Value
Balance at June 30, 2018	2,684	$ 5.26	6.16	$ 60
Options granted	3,359	4.09		
Options exercised	(115)	4.26		
Options forfeited/expired	(708)	5.51		
Balance at June 30, 2019	5,220	4.50	7.97	$ 11
Options granted	2,305	2.64		
Options exercised	—	—		
Options forfeited/expired	(1,569)	4.36		
Balance at June 30, 2020	5,956	3.82	8.04	$ —
Options granted	1,526	4.48		
Options exercised	(209)	4.09		
Options forfeited/expired	(243)	4.40		
Balance at June 30, 2021	7,030	3.93	7.66	$ 5,036
Vested or Expected to vest at June 30, 2021	6,455	3.94	7.55	
Exercisable at June 30, 2021	3,417	$ 4.09	6.63	$ 2,359

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the difference between the fair value of the Company's common stock on June 30, 2021 of $4.52 and the exercise price of the options that would have been received by option holders if all options exercisable had been exercised on June 30, 2021). The total intrinsic value of options exercised in the years ended June 30, 2021, 2020 and 2019 was approximately $0.2 million, $0 million and $0.1 million, respectively.

During the years ended June 30, 2021, 2020 and 2019, the Company recognized $2.4 million, $2.0 million and $1.4 million, respectively, of share-based compensation expense for stock options granted to employees.

Tax benefits from tax deductions for exercised options and disqualifying dispositions in excess of the deferred tax asset attributable to stock compensation costs for such options are credited to additional paid-in capital. The benefits are recognized against income taxes. Realized excess tax benefits related to stock options exercises was zero for each of the years ended June 30, 2021, 2020 and 2019.

As of June 30, 2021, there was approximately $7.2 million of unrecognized compensation cost net of estimated forfeitures, related to unvested stock options, which is expected to be recognized over a weighted average period of 2.57 years.

The following table summarizes information about outstanding and exercisable options at June 30, 2021 (in thousands, except years and exercise price):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number Outstanding	Weighted Average Exercise Price
$2.60 – 2.60	1,729	8.34	$ 2.60	720	$ 2.60
$2.96 – 4.01	654	7.08	3.55	434	3.77
$4.10 – 4.10	2,393	7.42	4.10	1,546	4.10
$4.23 – 4.52	1,432	9.49	4.47	2	4.23
$4.64 – 7.7	822	4.18	5.62	715	5.75
Total Outstanding	7,030	7.66	3.93	3,417	$ 4.09

Restricted Stock

The following table summarizes the activity of RSUs, PSUs and MSUs (in thousands, except fair value per share):

Unvested Restricted Stock	Restricted Stock Units	Performance Stock Units	Market Stock Units	Total Number of Shares Underlying Stock Awards	Weighted Average Grant Date Fair Value Per Share
Unvested at June 30, 2018	3,700	63	1,397	5,160	$ 5.03
Granted	1,386	—	—	1,386	3.68
Vested	(1,481)	(10)	—	(1,491)	5.44
Cancelled/Forfeited	(521)	(53)	(756)	(1,330)	5.10
Unvested at June 30, 2019	3,084	—	641	3,725	4.34
Granted	2,009	419	—	2,428	2.74
Vested	(1,579)	—	—	(1,579)	4.62
Cancelled/Forfeited	(343)		(470)	(813)	3.96
Unvested at June 30, 2020	3,171	419	171	3,761	3.26
Granted	1,738	280	—	2,018	4.16
Vested	(1,452)	—	—	(1,452)	3.52
Cancelled/Forfeited	(539)	(419)	(171)	(1,129)	3.20
Unvested at June 30, 2021	2,918	280	-	3,198	$ 3.73

As of June 30, 2021, there was approximately $8.7 million of unrecognized compensation cost, net of estimated forfeitures, related to restricted stock, which is expected to be recognized over a weighted average period of 2.02 years.

Restricted Stock Units

The Company recognized $5.4 million, $4.9 million and $7.2 million of share-based compensation expense, net of estimated forfeitures, related to RSUs during the years ended June 30, 2021, 2020 and 2019. The weighted average grant date fair value per share of RSUs was $4.16, $2.74 and $3.68 for the years ended June 30, 2021, 2020

and 2019, respectively. The aggregate fair market value of RSUs that vested during the year ended June 30, 2021 was $5.8 million.

Performance Stock Units

The Compensation Committee approved the grant of 280,000, 419,000 and zero PSUs to select employees of the Company in the years ended June 30, 2021, 2020 and 2019, respectively. Of these PSUs, 10,000 were vested in the year ended June 30, 2019 due to the achievement of the requisite performance targets. No PSUs vested in the years ended June 30, 2021 and June 30, 2020. During the years ended June 30, 2021, 2020 and 2019, 419,000, zero and 53,000 PSUs were cancelled, respectively.

The Company recognized $0 expense or benefit and an expense of $0.1 million, of share-based compensation expense, net of estimated forfeitures, related to PSUs during the years ended June 30, 2021, 2020, and 2019, respectively.

Market Stock Units

The Compensation Committee approved the performance equity program, referred to as the market stock unit program, or MSU program, in October 2012. The Company's MSU Program uses the Russell 2000 index as a performance benchmark and requires that the Company's total stockholder return match or exceed that of the Russell 2000. Based on a sliding scale of how much the Company's total stockholder return outperforms the Russell 2000 benchmark, the participating executives can earn up to a maximum of 150% of the target number of shares over two measurement periods. The Company uses a Monte Carlo simulation to calculate the fair value of the award on the grant date. The Compensation Committee approved the grant of 0.6 million MSUs to select employees of the Company in the year ended June 30, 2019 and none were granted for the years ended June 30, 2021 and 2020. Of these MSUs, no shares vested in the years ending June 30, 2021, 2020 and 2019, respectively, due to the non-achievement of the requisite performance target against the Russell 2000 index while 0.2 million, 0.5 million and 0.8 million MSUs were cancelled in the years ended June 30, 2021, 2020 and 2019, respectively.

The Company recognized $0.1 million, $0.2 million and $1.0 million of share-based compensation expense, net of estimated forfeitures, related to MSUs during the years ended June 30, 2021, 2020 and 2019, respectively. There were no MSUs granted during the years ended June 30, 2021, 2020 and 2019. As of June 30, 2021, there was no unrecognized compensation cost related to MSUs.

Employee Stock Purchase Plan

Under the Company's Amended and Restated 2007 Employee Stock Purchase Plan, or ESPP, qualified employees are permitted to purchase the Company's common stock at 85% of the lower of the fair market value of the common stock on the commencement date of each offering period or the fair market value on the specified purchase date. Employees' payroll deductions may not exceed 10% of their salaries. Employees may purchase up to 2,500 shares per period provided that the value of the shares purchased in any calendar year may not exceed $25,000, as calculated pursuant to the purchase plan.

The Company estimates the fair value of ESPP shares at the date of grant using the Black-Scholes option pricing model. The weighted average assumptions were as follows:

	Years Ended June 30,		
	2021	2020	2019
Risk–free interest rate	0.04% - 0.1%	0.17% - 1.60%	2.11% - 2.72%
Dividend yield	—%	—%	—%
Expected term	0.5 - 1.0	0.5 - 1.0	0.5 - 1.0
Expected volatility	36.10% - 65.58%	45.46% - 75.21%	30.9% - 60.0%

The risk-free rate for the expected term of the ESPP option was based on the U.S. Treasury Constant Maturity rate for each offering period; expected volatility was based on the historical volatility of the Company's common stock; and the expected term was based upon the offering period of the ESPP. For the years ended June 30, 2021, 2020 and 2019, the Company recognized $1.4 million, $1.1 million and $1.1 million, respectively, of compensation expense related to its ESPP.

The Company issued 1.2 million, 1.1 million and 0.9 million shares under the ESPP during fiscal 2021, 2020 and 2019, respectively, at a weighted average price per share of $1.9, $2.16 and $3.31, respectively. As of June 30, 2021, total unrecognized compensation cost related to the ESPP plan was $0.7 million, which the Company expects to recognize over a weighted average period of 0.5 years.

Note 13. Joint Venture

In January 2019, the Company's wholly-owned subsidiary, Accuray Asia Limited ("Accuray Asia"), entered into an agreement with CNNC High Energy Equipment (Tianjin) Co., Ltd. (the "CIRC Subsidiary"), a wholly-owned subsidiary of China Isotope & Radiation Corporation, to form a joint venture, CNNC Accuray (Tianjin) Medical Technology Co. Ltd. (the "JV"), to manufacture and sell radiation oncology systems in China.

In exchange for the 49% equity interest in the JV, the Company, through Accuray Asia, made in-kind capital contributions consisting of two full radiation oncology systems from the Company's inventory in the quarter ended December 31, 2019. The investment is reported as an Investment in joint venture on the Company's consolidated balance sheets. The Company recognized a gain of $13.0 million related to the value of the capital contribution to the JV. This gain was recorded as non-operating, other income in the year ended June 30, 2020.

The Company applies the equity method of accounting to its ownership interest in the JV as the Company has the ability to exercise significant influence over the JV but lacks controlling financial interest and is not the primary beneficiary. The Company recognizes the 49% proportionate share of the JV income or loss on a one-quarter lag due to the timing of the availability of the JV's financial records The Company recognizes revenue on sales to the JV in the current period, eliminating a portion of profit to the extent goods sold have not been sold through by the JV to an end customer at the end of such reporting period. The Company deferred $2.1 million and $1.8 million of intra-entity profit margin as of June 30, 2021 and June 30, 2020, respectively. During the year ended June 30, 2021, the Company recognized $1.8 million of previously deferred intra-entity profit margin from sales and recorded intra-entity profit margin deferral of $2.1 million from sales executed during the period. The Company's consolidated accumulated deficit includes $0.9 million of accumulated income related to the Company's equity method investment.

As of June 30, 2021, the Company had a carrying value of $15.9 million in the JV and owned a 49% interest in the entity. The Company's proportional share of the underlying equity in net assets of the JV was approximately $13.7 million. The difference of $2.2 million increased by $2.1 million eliminated intra-entity profit constitutes equity method goodwill of $4.4 million at June 30, 2021 including $0.1 million impact of foreign currency exchange and is subject to impairment analysis. No impairment was identified as of June 30, 2021.

Summarized financial information of the JV is based one-quarter lag due to the timing of the availability of the JV's financial records is as follows (in thousands):

	Twelve Months Ended March 31, 2021	Six Months Ended March 31, 2020
Statement of Operations Data:		
Revenue	$ 33,054	$ 13,764
Gross Profit	$ 10,578	$ 2,960
Net income (loss)	$ 1,785	$ (306)
Net income (loss) attributable to the Company	$ 872	$ (149)

Summarized Balance Sheet Data:	As of March 31, 2021	As of March 31, 2020
Assets		
Current assets	$ 24,703	$ 16,776
Non current assets	23,089	16,125
	$ 47,792	$ 32,901
Liabilities and Stockholders' Equity		
Current liabilities	$ 16,854	$ 9,064
Non current liabilities	1,467	1,412
Stockholder's equity	29,471	22,425
	$ 47,792	$ 32,901

Note 14. Income Taxes

Income (loss) before provision for income taxes on the accompanying statements of operations and comprehensive loss included the following components (in thousands):

	Years Ended June 30,		
	2021	2020	2019
Domestic	$ (8,448)	$ (1,811)	$ (23,799)
Foreign	3,889	7,501	9,455
Total worldwide	$ (4,559)	$ 5,690	$ (14,344)

The provision for income taxes consisted of the following (in thousands):

	Years Ended June 30,		
	2021	2020	2019
Current:			
Federal	$ —	$ —	$ —
State	17	15	32
Foreign	1,849	1,495	2,140
Total current	$ 1,866	$ 1,510	$ 2,172
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	(114)	353	(86)
Total deferred	(114)	353	(86)
Total provision for income taxes	$ 1,752	$ 1,863	$ 2,086

A reconciliation of income taxes at the statutory federal income tax rate to the provision for income taxes included in the accompanying consolidated statements of operations and comprehensive loss is as follows (in thousands):

	Years Ended June 30,		
	2021	2020	2019
U.S. federal taxes (benefit):			
At federal statutory rate	$ (958)	$ 1,195	$ (3,012)
State tax, net of federal benefit	17	15	32
Share-based compensation expense	879	810	1,128
Debt extinguishment	898	—	—
Other non-deductible permanent items	155	418	486
R&D credits	(1,278)	(635)	(877)
Foreign taxes	918	273	(38)
Other	(57)	(69)	58
Global Intangible Low-Taxed Income	243	1,185	1,924
Change in valuation allowance	935	(1,329)	2,385
Total	$ 1,752	$ 1,863	$ 2,086

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's net deferred tax assets were as follows (in thousands):

	June 30,	
	2021	2020
Deferred tax assets:		
Federal and state net operating losses	$ 75,033	$ 75,615
Accrued expenses and reserves	6,597	4,972
Lease liability	4,258	5,366
Deferred revenue	5,093	5,038
R&D Credits	24,340	22,843
Share-based compensation expense	1,096	1,337
Capitalized research and development	2,088	2,683
Unicap	1,827	2,105
Fixed assets/intangibles	1,055	1,199
Section 163(j) interest	1,817	1,823
Other	1,082	1,290
Total deferred tax assets	124,286	124,271
Deferred tax liabilities:		
Contract acquisition costs	(1,174)	(977)
Right of use assets	(3,533)	(4,508)
Debt	(5,612)	—
Total deferred tax liabilities	(10,319)	(5,485)
Valuation allowance	(113,476)	(118,300)
Net deferred tax assets	$ 491	$ 486

As of June 30, 2021, the Company had approximately $321.3 million and $132.2 million in federal and state net operating loss carryforwards, respectively. The federal and state carryforwards expire in varying amounts beginning in 2025 for federal and 2022 for state purposes.

In addition, as of June 30, 2021, the Company had federal and state research and development tax credits of approximately $24.6 million and $21.0 million, respectively. If not utilized, the federal research credits will begin to expire in 2022, the California research credits have no expiration date, and the other state research credits will begin to expire in 2022.

Under the Internal Revenue Code (“IRC”) Sections 382 and 383, annual use of our net operating loss and research tax credit carryforwards to offset taxable income may be limited based on cumulative changes in ownership. Although ownership changes have occurred in the past, the carryovers should be available for utilization by the Company before they expire, provided the Company generates sufficient future taxable income. There were no equity financings in the current fiscal year that would result in an ownership change under Section 382. The Company will continue to monitor the changes in equity that would affect the tax attributes as reported.

Based on the available objective evidence and history of losses, the Company has established a 100% valuation allowance against its combined domestic net assets because of uncertainty surrounding the realization of such deferred tax assets.

In March 2020, the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was signed into law in the United States. The provisions of the CARES Act did not have a material impact on the Company’s effective tax rate and consolidated financial statements given the Company's full valuation allowance against its net U.S. deferred tax assets.

Beginning fiscal year 2019, for U.S. federal tax purposes certain income earned by controlled foreign corporations (“CFCs”) must be included currently in the gross income of the CFC’s U.S. shareholder. The income required to be included in gross income is referred to as global intangible low tax income (“GILTI”) and is defined under IRC Section 951A as the excess of the shareholder’s net CFC tested income over the net deemed tangible income return. The GILTI inclusion amount has been absorbed by net operating losses. The Company has made a policy decision to record GILTI tax as a current-period expense when incurred.

The Tax Act also enacted the Base Erosion and Anti-Abuse Tax (“BEAT”). The BEAT minimum tax under IRC Section 59A is applicable to the extent that the BEAT tax amount is greater than the regular corporate tax for a given year. This tax is applicable to companies with prior 3-year average annual gross receipts exceeding $500 million. The Company does not currently meet this threshold since its current average annual gross receipts is less than $500 million.

The Company continues to permanently re-invest its $46.3 million undistributed earnings of its foreign subsidiaries outside the U.S. Future repatriation of the Company's foreign earnings are subject to income tax withholdings. Any potential deferred tax liability would net with the Company’s valuation allowance.

The aggregate changes in the balance of gross unrecognized tax benefits were as follows (in thousands):

	Years Ended June 30,		
	2021	2020	2019
Balance at beginning of year	$ 16,996	$ 16,280	$ 15,299
Tax positions related to current year:			
Additions	1,433	954	934
Tax positions related to prior years:			
Additions	786	286	580
Reductions	(450)	(524)	(533)
Balance at end of year	$ 18,765	$ 16,996	$ 16,280

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 with respect to legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. The reduction in prior year's tax positions primarily relates to lapses of applicable statutes of limitations. The Company anticipates that except for $0.02 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. As of June 30, 2021, the amount of gross unrecognized tax benefits was $18.8 million of which $18.6 million would not affect income tax expense before consideration of any valuation allowance.

The Company's practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of June 30, 2021 and 2020, the Company had approximately $0.05 million and $0.04 million, respectively, of cumulative accrued interest and penalties related to uncertain tax positions.

The Company files income tax returns in the United States federal, various states and foreign jurisdictions. Due to tax attributes being carried forward and utilized during open years, the statute of limitations remains open for the U.S. federal jurisdiction and domestic states for tax years from 2001 and forward. The statutes of limitation with respect to the foreign jurisdictions where the Company files income tax returns vary from jurisdiction to jurisdiction and range from 3 to 10 years, and the material foreign jurisdictions are France, Switzerland, and Japan.

The Company is also subject to examination of its income tax returns by the Internal Revenue Service (IRS) and other foreign tax authorities, and in some cases the Company has received additional tax assessments which have not been significant.

Note 15. Employee Benefit Plan

The Company's employee savings and retirement plan is qualified under Section 401(k) of the United States Internal Revenue Code. Employees may make voluntary, tax-deferred contributions to the 401(k) Plan up to the statutorily prescribed annual limit. The Company makes discretionary matching contributions to the 401(k) Plan on behalf of employees up to the limit determined by the Board of Directors. The Company contributed $1.1 million, $2.0 million and $2.1 million to the 401(k) Plan during the years ended June 30, 2021, 2020 and 2019, respectively.

Note 16. Defined Benefit Pension Obligation

The Company has established a defined benefit pension plan for its employees in its Switzerland subsidiary. The plan provides benefits to employees upon retirement, death or disability. The Company uses June 30 as the year-end measurement date for this plan. The unfunded liability of $4.3 million was recognized in long-term other liabilities in the accompanying balance sheet as of June 30, 2021. Actuarial gain of $0.8 million was recognized in other comprehensive loss in fiscal 2021.

Obligations and Funded Status

The following table presents the funded status of the defined benefit pension plan (in thousands):

	June 30,	
	2021	2020
Change in benefit obligation:		
Benefit obligation—beginning of fiscal year	$ 18,426	$ 17,577
Service cost	1,766	2,003
Interest cost	38	62
Plan participants' contributions	1,676	2,886
Plan amendment	25	975
Actuarial (gain)/loss	(807)	(615)
Foreign currency changes	281	545
Benefit and expense payments	(2,700)	(5,007)
Benefit obligation—end of fiscal year	$ 18,705	$ 18,426
Change in plan assets:		
Plan assets—beginning of fiscal year	$ 13,958	$ 14,228
Employer contributions	1,117	1,327
Actual return on plan assets	199	112
Plan participants' contributions	1,676	2,885
Foreign currency changes	169	413
Benefit and expense payments	(2,700)	(5,007)
Plan assets—end of fiscal year	$ 14,419	$ 13,958
Funded status	$ (4,286)	$ (4,468)
Amounts recognized within the consolidated balance sheets:		
Assets	$ —	$ —
Long-term other liabilities	(4,286)	(4,468)
Net amount recognized	$ (4,286)	$ (4,468)

The following table presents the amounts recognized in accumulated other comprehensive loss (before tax) for the defined benefit pension plan (in thousands):

	June 30,	
	2021	2020
Net loss	$ (1,236)	$ (1,000)
Total recognized in other comprehensive income (loss)	872	(236)
Accumulated other comprehensive loss	$ (364)	$ (1,236)

The following table presents the projected benefit obligation, accumulated benefit obligation and fair value of plan assets for this defined benefit pension plan where accumulated benefit obligation exceeded the fair value of plan assets (in thousands):

	June 30,	
	2021	2020
Projected benefit obligation	$ 18,705	$ 18,426
Accumulated benefit obligation	$ 16,891	$ 16,175
Fair value of plan assets	$ 14,419	$ 13,958

Components of Net Periodic Benefit Cost and Other Amounts Recognized in Other Comprehensive Loss

The following table shows the components of the Company's net periodic benefit costs and the other amounts recognized in other comprehensive loss, before tax, related to the Company's defined benefit pension plan (in thousands):

	Year ended June 30,		
	2021	2020	2019
Net Periodic Benefit Costs:			
Service cost	$ 1,766	$ 2,003	$ 1,865
Interest cost	38	62	128
Expected returns on assets	(142)	(151)	(170)
Amortization of prior service cost	54	(2)	(55)
Amortization of net loss	—	—	—
Settlement charges	—	178	—
Net periodic benefit costs	1,716	2,090	1,768
Other Amounts Recognized in Other Comprehensive Loss:			
Net (gain) loss arising during the year	(850)	(593)	801
Prior service cost	(54)	2	—
Amortization of prior service cost	24	1,005	55
Amortization of net gain	—	—	—
Effect of settlement	8	(178)	—
Total recognized in other comprehensive (gain) loss	(872)	236	856
Total recognized in net periodic benefit costs and other comprehensive loss	$ 844	$ 2,326	$ 2,624

The amounts in accumulated other comprehensive loss that are expected to be recognized as components of net periodic benefit cost during fiscal year 2021 related to the Company's defined benefit pension plan are as follows (in thousands):

	2022
Net loss	$ (188)
Prior service credit	479
Accumulated other comprehensive loss	$ 291

Assumptions

The assumptions used to determine net periodic benefit cost and to compute the expected long-term return on assets for the Company's defined benefit pension plan were as follows:

	Fiscal Years		
	2021	2020	2019
Net Periodic Benefit Costs:			
Discount rate	0.40%	0.25%	0.45%
Rate of compensation increase	1.50%	1.50%	1.50%
Expected long-term return on assets	1.00%	1.00%	1.20%

The assumptions used to measure the benefit obligation for the Company's defined benefit pension plan were as follows:

	June 30,	
	2021	2020
Benefit Obligation:		
Discount rate	0.40%	0.25%
Rate of compensation increase	1.50%	1.50%

Estimated Contributions and Future Benefit Payments

The Company made contributions of approximately $1.1 million, $1.3 million and $1.4 million to the defined benefit pension plan during fiscal years 2021, 2020 and 2019 respectively. The Company expects total contributions to the defined benefit pension plan for fiscal year 2022 will be approximately $1.1 million.

Estimated future benefit payments expected to be paid by the defined benefit pension plan at June 30, 2021 are as follows (in thousands):

Year Ending June 30,	Future Benefits
2022	$ 891
2023	891
2024	889
2025	1,062
2026	903
Thereafter	6,280
Total	$ 10,916

Plan Assets

The plan assets are invested in insurance contracts with Copré Collective Foundation based in Lausanne, Switzerland at the end of fiscal years 2021 and 2020, respectively. In fiscal 2021, the risks of death and disability are reinsured with Zurich Life Insurance. The Copré Foundation for Occupational Benefits defines and is responsible for the asset strategy and invests the plan assets for the Company. In fiscal 2021 and 2020 the guaranteed interest rate for mandatory retirement savings was 1.00% for both years. The technical administration and management of the savings account are guaranteed by the Copré Foundation for Occupational Benefits. Insurance benefits due are paid directly to the entitled persons by the Copré Foundation for Occupational Benefits. Accuray International Sàrl has committed itself to pay the annual contributions and costs due under the pension fund regulations.

The contract of affiliation between the Company and the Copré Collective Foundation can be terminated by either side. In the event of a termination, recipients of retirement and survivors' benefits would remain with the collective foundation. The Company commits itself to transfer its active insured members and recipients of disability benefits to the new employee benefits institution, thus releasing the Copré Collective Foundation from all obligations.

Note 17. Segment Disclosure

The Company has one operating and reporting segment (oncology systems group), which develops, manufactures and markets proprietary medical devices used in radiation therapy for the treatment of cancer patients. The Company's Chief Executive Officer, its Chief Operating Decision Maker, reviews financial information presented on a consolidated basis for purposes of making operating decisions and assessing financial performance. The Company does not assess the performance of its individual product lines on measures of profit or loss, or asset based metrics. Therefore, the information below is presented only for revenues and long-lived tangible assets by geographic areas.

Revenues attributed to a country or region is based on the shipping addresses of the Company's customers. The following summarizes revenue by geographic region (in thousands):

	Years ended June 30,		
	2021	2020	2019
Americas	$ 105,878	$ 128,562	$ 135,683
Europe, Middle East, India and Africa	121,568	119,989	149,095
Asia Pacific, excluding Japan and China	26,425	31,297	44,136
Japan	62,636	72,688	70,214
China	79,782	30,392	19,657
Total	$ 396,289	$ 382,928	$ 418,785

Revenues attributed to a country or region is based on the shipping addresses of the Company's customers. The following summarizes revenue by geographic region (in thousands):

Information regarding geographic areas in which the Company has long-lived tangible assets is as follows (in thousands):

	June 30, 2021	June 30, 2020
Americas	$ 10,588	$ 12,807
Europe, Middle East, India and Africa	265	373
Asia Pacific, excluding Japan and China	170	126
Japan	701	1,183
China	608	860
Total	$ 12,332	$ 15,349

Note 18. Restructuring Charges

The Company incurred no restructuring charges for the year ended June 30, 2021.

On May 27, 2020, the Company informed affected employees of a cost saving initiative designed to reduce operating costs through the elimination of approximately 3 percent of its global workforce. These restructuring charges of $1.1 million were recorded in cost of goods sold and operating expenses in the consolidated statements of operations, of which $0.5 million was paid during fiscal 2020 and $0.6 million is accrued in the consolidated balance sheet as of June 30, 2020.

In October 2018, the Company informed affected employees of a cost savings initiative designed to reduce operating costs through the elimination of approximately 5 percent of its global workforce. These restructuring charges of $1.5 million were recorded in cost of goods sold and operating expenses in the consolidated statements of operations, of which $1.0 million was paid during fiscal 2019 and $0.5 million is accrued in the consolidated balance sheet as of June 30, 2019, the remainder was paid in fiscal year 2020.

Note 19. Subsequent Events

The Company has evaluated subsequent events through the filing of this Annual Report on Form 10-K and determined that there have been no events that have occurred that would require adjustments to our disclosures in the consolidated financial statements.

Note 20. Quarterly Financial Data (unaudited)

The following table provides the selected quarterly financial data for fiscal 2021 and 2020 (in thousands, except net income (loss) per share amounts:

	Quarters ended			
	September 30, 2020	December 31, 2020	March 31, 2021	June 30, 2021
Net revenue	$ 85,332	$ 97,456	$ 102,562	$ 110,936
Gross profit	$ 35,403	$ 40,831	$ 39,542	$ 43,731
Net Income (loss)	$ 402	$ 4,769	$ (390)	$ (11,092)
Net income (loss) per share - basic	$ 0.00	$ 0.05	$ (0.00)	$ (0.12)
Net income (loss) per share - diluted	$ 0.00	$ 0.05	$ (0.00)	$ (0.12)
Weighted average common shares used in computing net income (loss) per share:				
Basic	91,194	92,025	93,123	91,613
Diluted	91,681	93,353	93,123	91,613

	Quarters ended			
	September 30, 2019	December 31, 2019	March 31, 2020	June 30, 2020
Net revenue	$ 89,577	$ 98,826	$ 99,548	$ 94,977
Gross profit	$ 32,943	$ 37,900	$ 39,133	$ 39,745
Net income loss	$ (9,356)	$ 10,710	$ 2,625	$ (152)
Net loss per share—basic and diluted	$ (0.11)	$ 0.12	$ 0.03	$ (0.00)
Weighted average common shares used in computing net income (loss) per share:				
Basic	88,772	89,517	90,476	90,748
Diluted	88,772	90,279	90,855	90,748

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

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 defined in Rule 13a-15(e) of the Exchange Act) as of June 30, 2021.

Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of the end of the period covered by our Annual Report on Form 10-K, our disclosure controls and procedures were 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 SEC'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.

(b) Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Exchange Act. Under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of our internal control over financial reporting based upon the guidelines established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") 2013.

Based on this evaluation, management concluded that our internal control over financial reporting was effective as of June 30, 2021.

The effectiveness of our internal control over financial reporting as of June 30, 2021 has been audited by Grant Thornton LLP, an independent registered public accounting firm, as stated in their report included herein.

(c) Changes in Internal Control over Financial Reporting

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated any changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2021, and has concluded that there was no change during such quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Controls

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.

Item 9B. OTHER INFORMATION

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Accuray Incorporated

Opinion on internal control over financial reporting
We have audited the internal control over financial reporting of Accuray Incorporated (a Delaware corporation) and subsidiaries (the "Company") as of June 30, 2021, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of June 30, 2021, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated financial statements of the Company as of and for the year ended June 30, 2021, and our report dated August 17, 2021 expressed an unqualified opinion on those financial statements.

Basis for opinion
The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting
A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ GRANT THORNTON LLP
San Jose, California
August 17, 2021

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors, Executive Officers and Corporate Governance

The information in our 2021 Proxy Statement regarding directors and executive officers appearing under the headings “Proposal One—Election of Directors,” “Executive Officers” and “Delinquent Section 16(a) Reports” is incorporated herein by reference.

In addition, the information in our 2021 Proxy Statement regarding the director nomination process, the Audit Committee financial expert and the identification of the Audit Committee members appearing under the heading “Corporate Governance and Board of Directors Matters” is incorporated herein by reference.

There have been no material changes to the procedures by which stockholders may recommend nominees to our Board of Directors.

Item 11. EXECUTIVE COMPENSATION

The information in our 2021 Proxy Statement appearing under the headings “Executive Compensation,” “Compensation Committee Report,” “Compensation Discussion and Analysis,” “Compensation of Non-Employee Directors” and “Corporate Governance and Board of Directors Matters—Compensation Committee Interlocks and Insider Participation” is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information in our 2021 Proxy Statement appearing under the heading “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information in our 2021 Proxy Statement appearing under the headings “Certain Relationships and Related Transactions” and “Corporate Governance and Board of Directors Matters—Director Independence” is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information in our 2021 Proxy Statement appearing under the headings “Proposal Three—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit and Non-Audit Services” and “Proposal Three—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit Committee Pre-Approval Policies and Procedures” is incorporated herein by reference.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) We have filed the following documents as part of this report:

1. **Consolidated Financial Statements** (as set forth in Item 8)

2. **Consolidated Financial Statement Schedules**

All financial statement schedules have been omitted, since the required information is not applicable or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements and notes thereto included in this Annual Report on Form 10-K.

3 **Exhibits**

The following exhibits are incorporated by reference or filed herewith.

		Incorporated by Reference					
Exhibit No.	Exhibit Description	Filer (ARAY/ TOMO)	Form	File No.	Exhibit	Filing Date	Furnished or Filed Herewith
3.1	Amended and Restated Certificate of Incorporation of Registrant.	ARAY	8-K	001-33301	3.1	02/06/2013	

3.2	Amended and Restated Bylaws of Registrant.	ARAY	8-K	001-33301	3.1	03/23/2015
4.1	Indenture by and between Registrant and the Bank of New York Mellon Trust Company, N.A., dated as of February 13, 2013.	ARAY	10-Q	001-33301	4.1	05/09/2013
4.2	Indenture by and between Registrant and the Bank of New York Mellon Trust Company, N.A., dated as of April 24, 2014.	ARAY	8-K	001-33301	4.1	04/25/2014
4.3	Indenture between Registrant and The Bank of New York Mellon Trust Company, N.A., as trustee, dated as of August 7, 2017.	ARAY	8-K	001-33301	4.1	08/08/2017
4.4	Form of Common Stock Certificate.	ARAY	S-1/A	333-138622	4.3	02/05/2007
4.5	Form of 3.75% Convertible Senior Note due 2022 (included in Exhibit 4.3).	ARAY	8-K	001-33301	4.1	08/08/2017
4.6	First Supplemental Indenture, dated as of December 4, 2017, between the Registrant and The Bank of New York Mellon Trust Company, N.A., as trustee.	ARAY	8-K	001-33301	4.1	12/04/2017
4.7	Indenture, dated as of May 13, 2021, between the Registrant and The Bank of New York Mellon Trust Company, N.A., as trustee.	ARAY	8-K	001-33301	4.1	05/18/2021
4.8	Form of 3.75% Convertible Senior Note due 2026 (included in Exhibit 4.7)	ARAY	8-K	001-33301	4.1	5/18/2021
10.1	Industrial Complex Lease by and between Registrant and MP Caribbean, Inc., dated July 9, 2003, as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.	ARAY	S-1	333-138622	10.1	11/13/2006
10.2	Third Amendment to Industrial Complex Lease dated January 16, 2007.	ARAY	10-K	001-33301	10.1(a)	09/04/2007
10.3	Fourth Amendment to Industrial Complex Lease by and between the Registrant and BRCP Caribbean Portfolio, LLC, dated September 18, 2007.	ARAY	10-Q	001-33301	10.3	02/04/2010
10.4	Fifth Amendment to Industrial Complex Lease by and between the Registrant and BRCP Caribbean Portfolio, LLC, dated April 1, 2008.	ARAY	10-Q	001-33301	10.4	02/04/2010
10.5	Sixth Amendment to Industrial Complex Lease by and between the Registrant and I & G Caribbean, Inc., dated December 18, 2009.	ARAY	10-Q	001-33301	10.5	02/04/2010
10.6	Seventh Amendment to Lease by and between the Registrant and DWF III Caribbean, LLC, dated June 20, 2014.	ARAY	8-K	001-33301	10.1	06/24/2014

10.7	Eighth Amendment to Lease by and between the Registrant and DWF III Caribbean, LLC, dated October 31, 2014.	ARAY	10-Q	011-33301	10.1	02/06/2015	
10.8	Ninth Amendment to Lease by and between Google LLC and Accuray Incorporated, dated March 4, 2019.	ARAY	10-Q	011-33301	10.1	05/09/2019	
10.9	Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.	ARAY	S-1	333-138622	10.4	11/13/2006	
10.10*	Accuray Incorporated 2007 Incentive Award Plan.	ARAY	10-K	001-33301	10.8	09/19/2011	
10.11*	Form of Performance Stock Unit Grant Notice and Performance Stock Unit Agreement.	ARAY	8-K	001-33301	99.2	09/02/2014	
10.12*	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement.	ARAY	8-K	001-33301	99.1	09/02/2014	
10.13*	Form of Stock Option Grant Notice and Stock Option Agreement.	ARAY	8-K	001-33301	99.3	11/23/2011	
10.14*	Form of Market Stock Unit Grant Notice and Award Agreement.	ARAY	8-K	001-33301	99.1	10/17/2012	
10.15*	Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan and forms of award agreements thereunder.						X
10.16*	Amended and Restated 2007 Employee Stock Purchase Plan.	ARAY	8-K	001-33301	10.2	11/25/2020	
10.17*	Accuray Incorporated Performance Bonus Plan, as amended on September 22, 2016.	ARAY	DEF14A	001-33301	Appendix C	10/07/2016	
10.18*	Accuray Incorporated Company Bonus Plan.	ARAY	10-Q	001-33301	10.6	11/06/2018	
10.19*	Stand-Alone Inducement Restricted Stock Unit Agreement between Registrant and Shigeyuki Hamamatsu, effective September 29, 2017.	ARAY	S-8	333-220698	99.1	09/28/2017	
10.20*	Form of Accuray Incorporated Stand-Alone Inducement Restricted Stock Unit Agreement for Patrick Spine.	ARAY	S-8	333-224547	99.1	04/30/2018	
10.21*	Form of Accuray Incorporated Stand-Alone Inducement Performance Unit Agreement for Patrick Spine.	ARAY	S-8	333-224547	99.2	04/30/2018	
10.22*	Form of Accuray Incorporated Stand-Alone Inducement Stock Option Agreement for Patrick Spine.	ARAY	S-8	333-224547	99.3	04/30/2018	
10.23*	Form of Accuray Incorporated Stand-Alone Inducement Restricted Stock Unit Agreement for Suzanne Winter.	ARAY	S-8	333-234412	99.1	10/31/2019	
10.24*	Form of Accuray Incorporated Stand-Alone Inducement Stock Option Agreement for Suzanne Winter.	ARAY	S-8	333-234412	99.2	10/31/2019	
10.25*	Form of Accuray Incorporated Stand-Alone Inducement Restricted Stock Unit Agreement for Jim Dennison.	ARAY	S-8	333-251038	99.4	11/30/2021	

10.26*	Form of Accuray Incorporated Stand-Alone Inducement Stock Option Agreement for Jim Dennison.	ARAY	S-8	333-251038	99.5	11/30/2021
10.27*	Form of Accuray Incorporated Stand-Alone Inducement Restricted Stock Unit Agreement for J.P. Pignol.	ARAY	S-8	333-255701	99.1	04/30/2021
10.28*	Form of Accuray Incorporated Stand-Alone Inducement Stock Option Agreement for J.P. Pignol.	ARAY	S-8	333-255701	99.2	04/30/2021
10.29*	TomoTherapy Incorporated 2000 Stock Option Plan, as amended, and forms of option agreements thereunder.	ARAY	S-8	333-174952	99.1	06/17/2011
10.30*	TomoTherapy Incorporated 2002 Stock Option Plan, as amended, and forms of option agreements thereunder.	ARAY	S-8	333-174952	99.2	06/17/2011
10.31*	TomoTherapy Incorporated 2007 Equity Incentive Plan, as amended, and forms of option agreements thereunder.	ARAY	S-8	333-174952	99.3	06/17/2011
10.32*	Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers.	ARAY	10-Q	001-33301	10.7	05/10/2011
10.33	Development and OEM Supply Agreement by and between TomoTherapy Incorporated and Analogic Corporation, dated January 27, 2003.	TOMO	S-1/A	333-140600	10.11	04/16/2007
10.34*	Amended and Restated Renewal Executive Employment Agreement by and between the Registrant and Joshua H. Levine, dated January 1, 2020.	ARAY	10-Q	001-33301	10.1	05/08/2020
10.35*	Executive Employment Agreement by and between Registrant and Shigeyuki Hamamatsu, dated January 1, 2021.	ARAY	10-Q	001-33301	10.1	02/01/2021
10.36*	Change in Control Agreement between Registrant and Shigeyuki Hamamatsu, dated September 21, 2017.	ARAY	10-Q	001-33301	10.4	11/03/2017
10.37*	Executive Employment Agreement by and Between Registrant and Patrick Spine, dated January 1, 2021.	ARAY	10-Q	001-33301	10.3	02/01/2021
10.38*	Executive Employment Agreement by and Between Registrant and Jesse Chew, dated January 1, 2021.	ARAY	10-Q	001-33301	10.4	02/01/2021

10.39*	Amended and Restated Executive Employment Agreement by and Between Registrant and Suzanne Winter, dated July 1, 2021.						X
10.40*	Executive Employment Agreement by and between Registrant and Michael Hoge, dated January 1, 2021.	ARAY	10-Q	001-33301	10.5	04/30/2021	
10.41‡	Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as a lender and as agent, and the other lenders from time to time parties thereto, dated June 14, 2017.	ARAY	10-K	001-33301	10.37	08/25/2017	
10.42	Form of Exchange/Repurchase Agreement between Registrant and each signatory thereto, dated July 27, 2017.	ARAY	8-K	001-33301	10.1	07/28/2017	
10.43	Form of Subscription Agreement between Registrant and each signatory thereto, dated July 27, 2017.	ARAY	8-K	001-33301	10.2	07/28/2017	
10.44‡	Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as a lender and as agent, and the other financial institutions or other entities from time to time parties thereto, dated December 15, 2017.	ARAY	10-Q	001-33301	10.1	02/05/2018	
10.45‡	Amendment No. 1 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding IV Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time parties thereto, dated December 15, 2017.	ARAY	10-Q	001-33301	10.2	02/05/2018	
10.46‡	Amendment No. 1 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as a lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated July 12, 2018.	ARAY	10-K	001-33301	10.47	08/24/2018	

10.47‡	Amendment No. 2 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding IV Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated July 12, 2018.	ARAY	10-K	001-33301	10.48	08/24/2018
10.48	Amendment No. 2 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated December 28, 2018.	ARAY	10-Q	001-33301	10.6	02/08/2019
10.49	Amendment No. 3 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding X Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated December 28, 2018.	ARAY	10-Q	001-33301	10.7	02/08/2019

10.50†	Amendment No. 3 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated May 30, 2019.	ARAY	10-K	001-33301	10.51†	8/23/2019
10. 51†	Amendment No. 4 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding IV Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated May 30, 2019.	ARAY	10-K	001-33301	10. 52†	8/23/2019
10. 52†	Amendment No. 4 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated August 30, 2019.	ARAY	10-Q	001-33301	10.1	11/06/2019

10. 53†	Amendment No. 5 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding IV Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated August 30, 2019.	ARAY	10-Q	001-33301	10.2	11/06/2019	
10.54†	Amendment No. 5 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Financial Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated July 3, 2020.	ARAY	10-K	001-33301	10.52	8/25/20	
10.55†	Amendment No. 6 to Credit and Security Agreement by and among the Registrant, TomoTherapy Incorporated, any additional borrowers that may be added thereto, MidCap Funding IV Trust, individually as lender and as agent, and the other financial institutions or other entities from time to time party thereto, dated July 3, 2020.	ARAY	10-K	001-33301	10.53	8/25/20	
10.56†	Credit Agreement among the Registrant, as the Borrower, the several lenders from time to time party thereto, and Silicon Valley Bank, as administrative agent, lead arranger, issuing lender and swingline lender, dated as of May 6, 2021.						X
10.57	Form of Exchange Agreement, dated as of May 6, 2021, between the Registrant and each signatory thereto.	ARAY	8-K	001-33301	10.1	05/12/2021	
10.58	Form of Subscription Agreement, dated as of May 6, 2021, between the Registrant and each signatory thereto.	ARAY	8-K	001-33301	10.2	05/12/2021	
21.1	List of subsidiaries.						X
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm.						X
24.1	Power of Attorney (incorporated by reference to the signature page of this annual report on Form 10-K).						X
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.						X
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.						X

32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	X
101.INS	Inline XBRL Instance Document—the instance document does not appear in the Interactive Data File as its XBRL tags are embedded within the Inline XBRL document	X
101.SCH	Inline XBRL Taxonomy Extension Schema	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase	X
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)	

* Management contract or compensatory plan or arrangement.

‡ Confidential treatment has been granted with respect to portions of this exhibit.

† Certain portions of this exhibit have been omitted because they are both not material and would be competitively harmful if publicly disclosed.

The certification attached as Exhibit 32.1 that accompanies this Annual Report on Form 10-K is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Accuray Incorporated under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing. Form 10-K, irrespective of any general incorporation language contained in such filing.

Item 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, in the City of Sunnyvale, State of California, on the 17th day of August 2021.

ACCURAY INCORPORATED

By: /s/ Joshua H. Levine
Joshua H. Levine
Chief Executive Officer

By: /s/ Shig Hamamatsu
Shig Hamamatsu
Senior Vice President and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Joshua H. Levine and Shig Hamamatsu, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys- in- fact and agents, and any of them or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following and on the dates indicated.

Signature	Title	Date
/s/ Joshua H. Levine Joshua H. Levine	Chief Executive Officer and Director (Principal Executive Officer)	August 17, 2021
/s/ Shig Hamamatsu Shig Hamamatsu	Chief Financial Officer (Principal and Accounting Financial Officer)	August 17, 2021
/s/ Joseph E. Whitters Joseph E. Whitters	Chairperson of the Board and Director	August 17, 2021
/s/ Elizabeth Dávila Elizabeth Dávila	Director	August 17, 2021
/s/ Byron C. Scott Byron C. Scott	Director	August 17, 2021
/s/ Beverly A. Huss Beverly A. Huss	Director	August 17, 2021
/s/ Richard R. Pettingill Richard R. Pettingill	Director	August 17, 2021
/s/ Anne B. Le Grand Anne B. Le Grand	Director	August 17, 2021
/s/ James M. Hindman James M. Hindman	Director	August 17, 2021

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, Directors and Consultants, and
- to promote the success of the Company's business.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights, Performance Units, Performance Shares, and other stock or cash awards as the Administrator may determine.

2. Definitions. As used herein, the following definitions will apply:

(a) "Administrator" means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliate" means any entity that, directly or indirectly, controls, is controlled by, or is under common control with, the Company.

(c) "Applicable Laws" means the legal and regulatory requirements relating to the administration of equity-based awards, including but not limited to U.S. federal and state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any non-U.S. country or jurisdiction where Awards are, or will be, granted under the Plan.

(d) "Award" means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares, or other stock or cash awards as the Administrator may determine.

(e) "Award Agreement" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

(f) "Board" means the Board of Directors of the Company.

(g) "Change in Control" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, however, that for purposes of this subsection, the acquisition of additional stock by any one Person, who is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of fifty percent (50%) or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this subsection (i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the

Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12)-month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this subsection (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12)-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii)(B)(3). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this definition, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction will not constitute a Change in Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(h) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or regulation thereunder will include such section or regulation, any valid regulation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(i) "Committee" means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board, or a duly authorized committee of the Board, in accordance with Section 4 hereof.

(j) "Common Stock" means the common stock of the Company.

(k) "Company" means Accuray Incorporated, a Delaware corporation, or any successor thereto.

(l) "Consultant" means any natural person, including an advisor, engaged by the Company or a Parent, Subsidiary or Affiliate to render bona fide services to such entity, provided the services (i) are not in connection with the offer or sale of securities in a capital-raising transaction, and (ii) do not directly promote or

maintain a market for the Company's securities, in each case, within the meaning of Form S-8 promulgated under the Securities Act, and provided, further, that a Consultant will include only those persons to whom the issuance of Shares may be registered under Form S-8 promulgated under the Securities Act.

(m) "Covered Employee" means any Service Provider who would be considered a "covered employee" within the meaning of Section 162(m) of the Code.

(n) "Determination Date" means the latest possible date that will not jeopardize the qualification of an Award granted under the Plan as "performance-based compensation" under Code Section 162(m).

(o) "Director" means a member of the Board.

(p) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

(q) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate of the Company. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute "employment" by the Company.

(r) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(s) "Exchange Program" means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for awards of the same type (which may have higher or lower exercise prices and different terms), awards of a different type, and/or cash, (ii) Participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is increased or reduced.

(t) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the New York Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market of The NASDAQ Stock Market, its Fair Market Value will be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

(u) "Fiscal Year" means the fiscal year of the Company.

(v) "Full Value Award" means any Award which results in the issuance of Shares other than Options, Stock Appreciation Rights or other Awards that are based solely on an increase in value of the Shares following the grant date.

(w) "GAAP" means U.S. generally accepted accounting principles.

(x) "Incentive Stock Option" means an Option that by its terms qualifies and is intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(y) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(z) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(aa) "Option" means a stock option granted pursuant to the Plan.

(bb) "Outside Director" means a Director who is not an Employee.

(cc) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(dd) "Participant" means the holder of an outstanding Award.

(ee) "Performance Goals" will have the meaning set forth in Section 12 of the Plan.

(ff) "Performance Period" means any Fiscal Year of the Company or such other period as determined by the Administrator in its sole discretion.

(gg) "Performance Share" means an Award denominated in Shares which may be earned in whole or in part upon attainment of Performance Goals or other vesting criteria as the Administrator may determine pursuant to Section 11.

(hh) "Performance Unit" means an Award which may be earned in whole or in part upon attainment of Performance Goals or other vesting criteria as the Administrator may determine and which may be settled for cash, Shares or other securities or a combination of the foregoing pursuant to Section 11.

(ii) "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock are subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, continued service, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

(jj) "Plan" means this Amended and Restated 2016 Equity Incentive Plan.

(kk) "Restricted Stock" means Shares issued pursuant to a Restricted Stock award under Section 8 of the Plan, or issued pursuant to the early exercise of an Option.

(ll) "Restricted Stock Unit" means a bookkeeping entry representing an amount equal to the Fair Market Value of one Share, granted pursuant to Section 9. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

(mm) "Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(nn) "Section 16(b)" means Section 16(b) of the Exchange Act.

(oo) "Securities Act" means the Securities Act of 1933, as amended.

(pp) "Section 409A" means Section 409A of the Code and the final regulations and any guidance promulgated thereunder, as may be amended from time to time.

(qq) "Service Provider" means an Employee, Director or Consultant.

(rr) "Share" means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

(ss) "Stock Appreciation Right" means an Award, granted alone or in connection with an Option, that pursuant to Section 9 is designated as a Stock Appreciation Right.

(tt) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

(a) Stock Subject to the Plan. Subject to the provisions of Section 15(a) of the Plan, the maximum aggregate number of Shares that may be issued under the Plan is (i) 18,420,000 Shares, plus (ii) any Shares which have been reserved but not issued pursuant to any awards granted under the Company's 2007 Incentive Award Plan, as amended (the "Existing Plan"), as of November 17, 2016 and any Shares subject to stock options, restricted stock units, performance shares, performance units, or similar awards granted under the Existing Plan, that, on or after November 17, 2016, expire or otherwise terminate without having been exercised in full and Shares issued pursuant to awards granted under the Existing Plan that are forfeited to or repurchased by the Company, with the maximum number of Shares to be added to the Plan from the Existing Plan equal to 10,084,101. The Shares may be authorized, but unissued, or reacquired Common Stock.

(b) Full Value Awards. Any Shares subject to Full Value Awards will be counted against the numerical limits of Section 3(a)(i) as 1.71 Shares for every 1 Share subject thereto. Further, if Shares subject to any Full Value Award are forfeited to or repurchased by the Company and otherwise would return to the Plan pursuant to Section 3(c), 1.71 times the number of Shares so forfeited or repurchased will return to the Plan and will again become available for issuance under the Plan.

(c) Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, or, with respect to Restricted Stock, Restricted Stock Units, Performance Units or Performance Shares, is forfeited to, or repurchased by, the Company due to failure to vest, then the unpurchased Shares (or for Awards other than Options or Stock Appreciation Rights the forfeited or repurchased Shares), which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). With respect to Stock Appreciation Rights, the gross Shares issued (i.e., Shares actually issued pursuant to a Stock Appreciation Right, as well as the Shares that represent payment of the exercise price and any applicable tax withholdings) pursuant to a Stock Appreciation Right will cease to be available under the Plan. Shares used to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will not become available for future grant or sale under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. For purposes of clarification, no Shares purchased by the Company with proceeds received from the exercise of an Option or Stock Appreciation Right will become available for issuance under this Plan. Notwithstanding the foregoing and, subject to adjustment as provided in Section 15, the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal the aggregate Share number stated in Section 3(a), plus, to the extent allowable under Section 422 of the Code, any Shares that become available for issuance under the Plan pursuant to Section 3(c).

(d) Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m). To the extent that the Administrator determines it to be desirable to qualify Awards granted hereunder as "performance-based compensation" within the meaning of Code Section 162(m), the Plan will be administered by a Committee of two (2) or more "outside directors" within the meaning of Code Section 162(m).

(iii) Rule 16b-3. To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder will be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration. Other than as provided above, the Plan will be administered by (A) the Board or (B) a Committee, which committee will be constituted to satisfy Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator will have the authority, in its discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Awards may be granted hereunder;

(iii) to determine the number of Shares to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator will determine;

(vi) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;

(viii) to modify or amend each Award (subject to Sections 5(d) and 21 of the Plan), including but not limited to the discretionary authority to extend the post-termination exercisability period of Awards and to extend the maximum term of an Option (subject to Section 7(b) of the Plan regarding Incentive Stock Options);

(ix) to allow Participants to satisfy tax withholding obligations in such manner as prescribed in Section 16 of the Plan;

(x) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xi) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that otherwise would be due to such Participant under an Award; and

(xii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on all Participants and any other holders of Awards and will be given the maximum deference permitted by Applicable Laws.

5. Award Limitations.

(a) Annual Awards for Employees and Consultants. For so long as: (x) the Company is a "publicly held corporation" within the meaning of Code Section 162(m) and (y) the deduction limitations of Code Section 162(m) are applicable to the Company's Covered Employees, then, subject to Section 15, the limits specified below shall be applicable to Awards issued under the Plan:

(i) Limits on Options. No Employee or Consultant shall receive Options during any Fiscal Year covering in excess of 4,000,000 Shares.

(ii) Limits on Stock Appreciation Rights. No Employee or Consultant shall receive Stock Appreciation Rights during any Fiscal Year covering in excess of 4,000,000 Shares.

(iii) Limits on Restricted Stock. No Employee or Consultant shall receive Awards of Restricted Stock during any Fiscal Year covering in excess of 2,000,000 Shares.

(iv) Limits on Restricted Stock Units. No Employee or Consultant shall receive Restricted Stock Units during any Fiscal Year covering in excess of 2,000,000 Shares.

(v) Limits on Performance Shares. No Employee or Consultant shall receive Performance Shares during any Fiscal Year covering in excess of 2,000,000 Shares.

(vi) Limits on Performance Units. No Employee or Consultant shall receive Performance Units with an aggregate initial value of greater than $10,000,000.

(b) Annual Awards for Outside Directors. No Outside Director may be granted, in any Fiscal Year, Awards with a grant date fair value (determined in accordance with GAAP) of greater than $500,000. Any Award granted to a Participant while he or she was an Employee, or while he or she was a Consultant but not an Outside Director, will not count for purposes of the limitations under this Section 5(b).

(c) Minimum Vesting Requirements.

(i) General. Except as specified in Section 5(c)(ii), Restricted Stock Units, Options and Stock Appreciation Rights will vest no earlier than the 1-year anniversary of such Award's grant date (except if accelerated pursuant to a Change in Control or a termination of Participant's status as a Service Provider under certain circumstances, a Participant's death, or a Participant's Disability) (each, an "Acceleration Event").

(ii) Exception. Restricted Stock Units, Options and Stock Appreciation Rights may be granted to any Service Provider without regard to the minimum vesting requirements set forth in Section 5(c)(i) if the Shares subject to such Awards would not result in more than 5% of the maximum aggregate number of Shares reserved for issuance pursuant to all outstanding Restricted Stock Units, Options and Stock Appreciation Rights granted under the Plan (the "5% Limit"). Any Restricted Stock Units, Options or Stock Appreciation Rights that have their vesting discretionarily accelerated (except if accelerated pursuant to an Acceleration Event) are subject to the 5% Limit. For purposes of clarification, the Administrator may accelerate the vesting of any Award pursuant to an Acceleration Event without such vesting acceleration counting toward the 5% Limit. The 5% Limit applies in the aggregate to Restricted Stock Units, Options or Stock Appreciation Rights that do not satisfy the minimum vesting requirements set forth in Section 5(c)(i) and to the discretionary vesting acceleration of Restricted Stock Units, Options or Stock Appreciation Rights as specified in this Section 5(c)(ii).

(d) No Exchange Program. The Administrator may not implement an Exchange Program.

6. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units, and such other cash or stock awards as the Administrator determines may be granted to Service Providers. Incentive Stock Options may be granted only to Employees of the Company or any Parent or Subsidiary of the Company.

7. Stock Options.

(a) Grant of Option. Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate fair market value of the Shares with respect to which incentive stock options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars ($100,000), the portion of the Options falling within such limit will be Incentive Stock Options and the excess Options will be treated as Nonstatutory Stock Options. For purposes of this Section 7(a)(i), incentive stock options will be taken into account in the order in which they were granted. The fair market value of the Shares will be determined as of the time the option with respect to such Shares is granted.

(b) Term of Option. The term of each Option will be stated in the Award Agreement but will not exceed ten (10) years from the date the Option is granted. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

(c) Option Exercise Price and Consideration.

(i) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option will be determined by the Administrator, subject to the following:

(1) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price will be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(2) In the case of a Nonstatutory Stock Option, the per Share exercise price will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(3) Notwithstanding the foregoing, Options may be granted with a per Share exercise price of less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code.

(ii) Waiting Period and Exercise Dates. At the time an Option is granted and subject to the provisions of this Plan, the Administrator will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

(iii) Form of Consideration. The Administrator will determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator will determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of: (1) cash; (2) check; (3) other Shares, provided that such Shares have a fair market value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option will be exercised and provided

that accepting such Shares will not result in any adverse accounting consequences to the Company, as the Administrator determines in its sole discretion; (4) consideration received by the Company under a broker-assisted (or other) cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan; (5) by net exercise; (6) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws; or (7) any combination of the foregoing methods of payment.

(d) Exercise of Option.

(i) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator, subject to the provisions of this Plan, and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (i) a notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan.

Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(ii) Termination of Relationship as a Service Provider other than Death or Disability. If a Participant ceases to be a Service Provider, other than upon the Participant's termination as the result of the Participant's death or Disability, the Participant may exercise his or her Option within such period of time as is specified in the Award Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option will remain exercisable for three (3) months following the Participant's termination, but in no event later than the expiration of the term of such Option as set forth in the Award Agreement. If Participant dies during such post-employment period, the Option may be exercised following the Participant's death for one (1) year after Participant's death, but in no event later than the expiration of the term of such Option as set forth in the Award Agreement. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within such period of time as is specified in the Award Agreement to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option will remain exercisable for twelve (12) months following the Participant's termination, but in no event later than the expiration of the term of such Option as set forth in the Award Agreement. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If, after termination the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iv) Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised following the Participant's death within such period of time as is specified in the Award Agreement to the extent that the Option is vested on the date of death (but in no event may the option be exercised later than the expiration of the term of such Option as set forth in the Award Agreement), by the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Award Agreement, the Option will remain exercisable for twelve (12) months following Participant's death, but in no event later than the expiration of the term of such Option as set forth in the Award Agreement. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan. Unless otherwise provided by the Administrator, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will immediately revert to the Plan.

(v) Tolling Expiration. A Participant's Award Agreement may also provide that:

(1) if the exercise of the Option following the termination of Participant's status as a Service Provider (other than upon the Participant's death or Disability) would result in liability under Section 16(b), then the Option will terminate on the earlier of (A) the expiration of the term of the Option set forth in the Award Agreement, or (B) the tenth (10^{th}) day after the last date on which such exercise would result in liability under Section 16(b); or

(2) if the exercise of the Option following the termination of the Participant's status as a Service Provider (other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of Shares would violate the registration requirements under the Securities Act, then the Option will terminate on the earlier of (A) the expiration of the term of the Option or (B) the expiration of a period of thirty (30)-day period after the termination of the Participant's status as a Service Provider during which the exercise of the Option would not be in violation of such registration requirements.

8. Restricted Stock.

(a) Grant of Restricted Stock. Subject to the terms of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, will determine. Unless the Administrator determines otherwise, the Company as escrow agent will hold Shares of Restricted Stock until the restrictions on such Shares have lapsed.

(b) Restricted Stock Agreement. Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(c) Transferability. Except as provided in this Section 8, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction.

(d) Other Restrictions. Subject to the provisions of this Plan, the Administrator, in its sole discretion, may impose such other restrictions on Shares of Restricted Stock as it may deem advisable or appropriate.

(e) Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period of Restriction. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed.

(f) Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(g) Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares unless otherwise provided in the Award Agreement. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

(h) Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed will revert to the Company and again will become available for grant under the Plan in accordance with Section 3(b) of the Plan.

(i) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Restricted Stock as "performance-based compensation" under Code Section 162(m), the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the Determination Date. In granting Restricted Stock that is intended to qualify under Code Section 162(m), the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Award under Code Section 162(m) (e.g., in determining the Performance Goals).

9. Restricted Stock Units.

(a) Grant of Restricted Stock Units. Subject to the terms of the Plan, the Administrator, at any time and from time to time, Restricted Stock Units may be granted to Service Providers at any time and from time to time as determined by the Administrator.

(b) Restricted Stock Unit Agreement. Each Award of Restricted Stock Units will be evidenced by an Award Agreement that will specify such other terms and conditions as the Administrator, in its sole discretion, will determine, including all terms, conditions, and restrictions related to the grant, the number of Restricted Stock Units and the form of payout, which, subject to Section 9(e), may be left to the discretion of the Administrator.

(c) Vesting Criteria and Other Terms. Subject to the provisions of this Plan, the Administrator will set vesting criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units that will be paid out to the Participant. The Administrator may set vesting criteria based upon the achievement of Company-wide, divisional, business unit, or individual goals (including, but not limited to, continued employment or service), applicable federal or state securities laws or any other basis determined by the Administrator in its discretion. After the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any restrictions for such Restricted Stock Units.

(d) Earning Restricted Stock Units. Upon meeting the applicable vesting criteria, the Participant will be entitled to receive a payout as specified in the Award Agreement.

(e) Form and Timing of Payment. Payment of earned Restricted Stock Units will be made as soon as practicable after the date(s) set forth in the Award Agreement. The Administrator, in its sole discretion, may pay earned Restricted Stock Units in cash, Shares, or a combination thereof. Shares represented by Restricted Stock Units that are fully paid in cash again will be available for grant under the Plan.

(f) Cancellation. On the date set forth in the Award Agreement, all unearned Restricted Stock Units will be forfeited to the Company and become available for grant under the Plan.

(g) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Restricted Stock Units as "performance-based compensation" under Code Section 162(m), the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the

Administrator on or before the Determination Date. In granting Restricted Stock Units which are intended to qualify under Code Section 162(m), the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Award under Code Section 162(m) (e.g., in determining the Performance Goals).

10. Stock Appreciation Rights.

(a) Grant of Stock Appreciation Rights. Subject to the terms and conditions of the Plan, a Stock Appreciation Right may be granted to Service Providers at any time and from time to time as will be determined by the Administrator, in its sole discretion.

(b) Exercise Price and Other Terms. The Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of Stock Appreciation Rights granted under the Plan, provided, however, that the exercise price will be not less than 100% of the Fair Market Value of a Share on the date of grant.

(c) Stock Appreciation Right Agreement. Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the exercise price, the term of the Stock Appreciation Right, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

(d) Expiration of Stock Appreciation Rights. A Stock Appreciation Right granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement; provided, however, that the term will be no more than ten (10) years from the date of grant thereof. Notwithstanding the foregoing, the rules of Section 7(d) also will apply to Stock Appreciation Rights.

(e) Payment of Stock Appreciation Right Amount. Upon exercise of a Stock Appreciation Right, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

(i) The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; multiplied by

(ii) The number of Shares with respect to which the Stock Appreciation Right is exercised.

At the discretion of the Administrator, the payment upon Stock Appreciation Right exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

11. Performance Units and Performance Shares.

(a) Grant of Performance Units/Shares. Subject to the terms of the Plan, Performance Units and Performance Shares may be granted to Service Providers at any time and from time to time, as will be determined by the Administrator, in its sole discretion.

(b) Value of Performance Units/Shares. Each Performance Unit will have an initial value that is established by the Administrator on or before the date of grant. Each Performance Share will have an initial value equal to the Fair Market Value of a Share on the date of grant.

(c) Performance Objectives and Other Terms. The Administrator will set performance objectives or other vesting provisions (including, without limitation, continued status as a Service Provider) in its discretion which, depending on the extent to which they are met, will determine the number or value of Performance Units/Shares that will be paid out to the Service Providers. Each Award of Performance Units/Shares will be evidenced by an Award Agreement that will specify the Performance Period, and such other terms and conditions as the Administrator, in its sole discretion, will determine. The Administrator may set performance objectives based upon the achievement of Company-wide, divisional, business unit or individual goals (including, but not limited to,

continued employment or service), applicable federal or state securities laws, or any other basis determined by the Administrator in its discretion.

(d) Earning of Performance Units/Shares. After the applicable Performance Period has ended, the holder of Performance Units/Shares will be entitled to receive a payout of the number of Performance Units/Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance objectives or other vesting provisions have been achieved. After the grant of a Performance Unit/Share, the Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such Performance Unit/Share.

(e) Form and Timing of Payment of Performance Units/Shares. Payment of earned Performance Units/Shares will be made as soon as practicable after the expiration of the applicable Performance Period. The Administrator, in its sole discretion, may pay earned Performance Units/Shares in the form of cash, in Shares (which have an aggregate Fair Market Value equal to the value of the earned Performance Units/Shares at the close of the applicable Performance Period) or in a combination thereof.

(f) Cancellation of Performance Units/Shares. On the date set forth in the Award Agreement, all unearned or unvested Performance Units/Shares will be forfeited to the Company, and again will be available for grant under the Plan.

(g) Section 162(m) Performance Restrictions. For purposes of qualifying grants of Performance Units/Shares as "performance-based compensation" under Code Section 162(m), the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the Determination Date. In granting Performance Units/Shares which are intended to qualify under Code Section 162(m), the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Award under Code Section 162(m) (e.g., in determining the Performance Goals).

12. Performance-Based Compensation Under Code Section 162(m).

(a) General. If the Administrator, in its discretion, decides to grant an Award intended to qualify as "performance-based compensation" under Code Section 162(m), the provisions of this Section 12 will control over any contrary provision in the Plan; provided, however, that the Administrator may in its discretion grant Awards that are not intended to qualify as "performance-based compensation" under Code Section 162(m) to such Participants that are based on Performance Goals or other specific criteria or goals but that do not satisfy the requirements of this Section 12.

(b) Performance Goals. The granting and/or vesting of Awards of Restricted Stock, Restricted Stock Units, Performance Shares and Performance Units and other incentives under the Plan may be made subject to the attainment of performance goals relating to one or more business criteria within the meaning of Code Section 162(m) and may provide for a targeted level or levels of achievement ("Performance Goals") including stock price, revenue, profit, bookings, cash flow, customer retention, customer satisfaction, net bookings, net income, net profit, operating cash flow, operating expenses, total earnings; earnings per share, diluted or basic; earnings per share from continuing operations, diluted or basic; earnings before interest and taxes; earnings before interest, taxes, depreciation, and amortization; pre-tax profit; net asset turnover; inventory turnover; capital expenditures; net earnings; operating earnings; gross or operating margin; profit margin, debt; working capital; return on equity; return on net assets; return on total assets; return on capital; return on investment; return on sales; net or gross sales; market share; economic value added; cost of capital; change in assets; expense reduction levels; debt reduction; productivity; new product introductions; delivery performance; individual objectives; and total stockholder return. Any Performance Goals may be used to measure the performance of the Company as a whole or, except with respect to stockholder return metrics, to a region, business unit, affiliate or business segment, and any Performance Goals may be measured either on an absolute basis, a per share basis or relative to a pre-established target, to a previous period's results or to a designated comparison group, and, with respect to financial metrics, which may be determined in accordance with GAAP, in accordance with accounting principles established by the International Accounting Standards Board ("IASB Principles") or which may be adjusted when established to either exclude any items otherwise includable under GAAP or under IASB Principles or include any items otherwise excludable under GAAP or under IASB Principles. In all

other respects, Performance Goals will be calculated in accordance with the Company's financial statements, generally accepted accounting principles, or under a methodology established by the Administrator prior to or at the time of the issuance of an Award and which is consistently applied with respect to a Performance Goal in the relevant Performance Period. In addition, the Administrator will adjust any performance criteria, Performance Goal or other feature of an Award that relates to or is wholly or partially based on the number of, or the value of, any stock of the Company, to reflect any stock dividend or split, repurchase, recapitalization, combination, or exchange of shares or other similar changes in such stock. The Performance Goals may differ from Participant to Participant and from Award to Award. Prior to the Determination Date, the Administrator will determine whether any significant element(s) will be included in or excluded from the calculation of any Performance Goal with respect to any Participant.

(c) Procedures. To the extent necessary to comply with the performance-based compensation provisions of Code Section 162(m), with respect to any Award granted subject to Performance Goals, within the first twenty-five percent (25%) of the Performance Period, but in no event more than ninety (90) days following the commencement of any Performance Period (or such other time as may be required or permitted by Code Section 162(m)), the Administrator will, in writing, (i) designate one or more Participants to whom an Award will be made, (ii) select the Performance Goals applicable to the Performance Period, (iii) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (iv) specify the relationship between Performance Goals and the amounts of such Awards, as applicable, to be earned by each Participant for such Performance Period. Following the completion of each Performance Period, the Administrator will certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amounts earned by a Participant, the Administrator will have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Administrator may deem relevant to the assessment of individual or corporate performance for the Performance Period. A Participant will be eligible to receive payment pursuant to an Award for a Performance Period only if the Performance Goals for such period are achieved.

(d) Additional Limitations. Notwithstanding any other provision of the Plan, any Award which is granted to a Participant and is intended to constitute qualified performance based compensation under Code Section 162(m) will be subject to any additional limitations set forth in the Code (including any amendment to Section 162(m)) or any regulations and ruling issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Code Section 162(m), and the Plan will be deemed amended to the extent necessary to conform to such requirements.

13. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months following the first (1st) day of such leave any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

14. Transferability of Awards.

(a) General. Except to the limited extent provided in Section 14(b), an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant.

(b) Limited Transferability. The Administrator may permit an Award (other than an Incentive Stock Option) to be assigned or transferred, in whole or in part, during a Participant's lifetime: (i) under a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2); or (ii) to a "family member," within the meaning of and in accordance with instructions for Form S-8 promulgated under the Securities Act, to the extent such assignment or transfer is in connection with the Participant's estate plan; or (iii) to the extent required by any Applicable Law.

15. Adjustments; Dissolution or Liquidation; Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Award, and the numerical Share limit in Sections 3 and 5(a) of the Plan.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it previously has not been exercised, an Award will terminate immediately prior to the consummation of such proposed action.

(c) Change in Control. Except as set forth in this Section 15(c), in the event of a merger of the Company with or into another corporation or other entity or a Change in Control, each outstanding Award will be treated as the Administrator determines, including, without limitation, that Awards may be assumed, or substantially equivalent Awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices. In taking any of the actions permitted under this, the Administrator will not be required to treat all Awards similarly in the transaction.

In the event that the successor corporation does not assume or substitute for the Award (and for the avoidance of doubt, notwithstanding the vesting limitations under Section 5(c)), the Participant will fully vest in and have the right to exercise all of his or her outstanding Options and Stock Appreciation Rights, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock and Restricted Stock Units will lapse, and, with respect to Awards with performance-based vesting, unless specifically provided otherwise under the applicable Award Agreement or other written agreement between the Participant and the Company, all performance goals or other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels, prorated based on the portion of the Performance Period that elapsed as of immediately prior to the applicable merger or Change in Control. All other terms and conditions with respect to such Awards with performance-based vesting will be deemed met. In addition, if an Option or Stock Appreciation Right is not assumed or substituted in the event of a Change in Control, the Administrator will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

For the purposes of this subsection (c), an Award will be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of an Option or Stock Appreciation Right or upon the payout of a Restricted Stock Unit, Performance Unit or Performance Share, for each Share subject to such Award, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control.

Notwithstanding anything in this Section 15(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more Performance Goals will not be considered assumed if the Company or its successor modifies any of such Performance Goals without the Participant's consent; provided, however, a modification to such Performance Goals only to reflect the successor corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption.

(d) Outside Director Awards. With respect to Awards granted to an Outside Director that are assumed or substituted for in a merger or Change in Control, if on the date of or following such assumption or substitution the Participant's status as a Director or a director of the successor corporation, as applicable, is terminated other than upon a voluntary resignation by the Participant (unless such resignation is at the request of the acquirer), then the Participant will fully vest in and have the right to exercise Options and Stock Appreciation Rights as to all of the Shares underlying such Award, including those Shares which would not otherwise be vested or exercisable, all restrictions on Restricted Stock and Restricted Stock Units will lapse, and, with respect to Performance Units and Performance Shares, all performance goals or other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels, prorated based on the portion of the Performance Period that elapsed as of immediately prior to the applicable merger or Change in Control. All other terms and conditions with respect to such Awards with performance-based vesting will be deemed met.

16. Tax.

(a) Withholding Requirements. Prior to the delivery of any Shares or cash pursuant to an Award (or exercise thereof) or such earlier time as any tax withholding obligations are due, the Company will have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local, foreign or other taxes (including the Participant's FICA obligation) required to be withheld with respect to such Award (or exercise thereof).

(b) Withholding Arrangements. The Administrator, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit a Participant to satisfy such tax withholding obligation, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable Shares having a fair market value equal to the minimum statutory amount required to be withheld or a greater amount if that would not result in adverse financial accounting treatment, (iii) delivering to the Company already-owned Shares having a fair market value equal to the statutory amount required to be withheld, provided the delivery of such Shares will not result in any adverse accounting consequences, as the Administrator determines in its sole discretion, or (iv) selling a sufficient number of Shares otherwise deliverable to the Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. The amount of the withholding requirement will be deemed to include any amount which the Administrator agrees may be withheld at the time the election is made, not to exceed the amount determined by using the maximum federal, state or local marginal income tax rates applicable to the Participant with respect to the Award on the date that the amount of tax to be withheld is to be determined.

(c) Compliance With Section 409A. Awards will be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Section 409A such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Section 409A, except as otherwise determined in the sole discretion of the Administrator. The Plan and each Award Agreement under the Plan is intended to meet the requirements of Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that an Award or payment, or the settlement or deferral thereof, is subject to Section 409A, the Award will be granted, paid, settled or deferred in a manner that will meet the requirements of Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Section 409A.

17. Forfeiture Events.

(a) Generally. The Administrator may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award will be subject to the reduction, cancellation, forfeiture, or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Notwithstanding any provisions to the contrary under this Plan, an Award shall be subject to the Company's clawback policy as may be established and/or amended from time to time (the "Clawback Policy"). In the absence of a Clawback Policy, each Award shall be subject to Section 17(b). The Administrator may require a Participant to forfeit, return or reimburse the Company all or a portion of the Award and any amounts paid thereunder pursuant to the terms of the Clawback Policy or Section 17(b) or as necessary or appropriate to comply with Applicable Laws.

(b) Forfeiture Provisions Applicable in the Absence of a Clawback Policy. The following provisions shall apply while a Clawback Policy is not in effect:

(i) Recoupment in the Event of a Restatement of Financial Results. Notwithstanding anything to the contrary set forth in the Plan or any Award, in the event the Company is required to restate its financial results, the Board will review the conduct of executive officers in relation to the restatement. If the Board determines that an executive officer has engaged in misconduct, or otherwise violated the Company's Code of Conduct and Ethics for Employees, Agents and Contractors, and that such misconduct or violation contributed to such restatement, then the Board may, in its discretion, take appropriate action to remedy the misconduct or violation, including, without limitation, seeking reimbursement of any portion of any performance-based or incentive compensation paid or awarded to the employee that is greater than would have been paid or awarded if calculated based on the restated financial results, to the extent not prohibited by governing law. For this purpose, the term "executive officer" means executive offers as defined by the Exchange Act. Any such action by the Board would be in addition to any other actions the Board may take under the Company's policies, as modified from time to time, or any actions imposed by law enforcement, regulators or other authorities.

(ii) Recoupment in the Event of a Material Reduction in Publicly Disclosed Backlog. Notwithstanding anything to the contrary set forth in the Plan or any Award, in the event the Company is required to make a Material Reduction of its publicly-disclosed backlog figures, the Board will review the conduct of executive officers in relation to the determination and publication of backlog figures and their subsequent Material Reduction. If the Board determines that an executive officer has engaged in knowing or reckless misconduct, or otherwise violated the Company's Code of Conduct and Ethics for Employees, Agents, and Contractors, and that such misconduct or violation led to the improper inclusion of a proposed system sale in publicly-disclosed backlog, then the Board shall, in its discretion, take appropriate action to remedy the misconduct or violation, including, without limitation, seeking reimbursement of any portion of any performance-based or incentive compensation paid or awarded to the executive officer that is greater than would have been paid or awarded if calculated based on the Materially Reduced backlog figures, to the extent not prohibited by governing law. For this purpose, the term "executive officer" means executive offers as defined by the Exchange Act. "Material Reduction" shall mean a Reduction of at least 15% of the total backlog publicly reported by the Company in the preceding quarter. By "Reduction," this provision is intended to relate to system sales which are included in publicly-disclosed backlog but are then removed due to the cancellation of the transaction. Removals from backlog due to the fact that a system sale shipped and was recognized as revenue or where a system is removed from backlog due to it being in backlog longer than the time provided for by the Company's backlog criteria shall not count as a "Reduction." Any action taken by the Board pursuant to this provision would be in addition to any other actions the Board may take under the Company's policies, as modified from time to time, or any actions imposed by law enforcement, regulators or other authorities.

18. No Effect on Employment or Service. Neither the Plan nor any Award will confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider, nor will they interfere in any way with the Participant's right or the right of the Company, or Parent or Subsidiary, as applicable, to terminate such relationship at any time, with or without cause, to the extent permitted by Applicable Laws.

19. Grant Date. The grant date of an Award will be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

20. Term of Plan. Subject to Section 24 of the Plan, the Plan will become effective upon its adoption by the Board. It will continue in effect for a term of ten (10) years from August 24, 2016, unless terminated earlier under Section 21 of the Plan.

21. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Administrator may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company will obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan will materially impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

22. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares will not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares will comply with Applicable Laws and will be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

23. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction or to complete or comply with the requirements of any registration or other qualification of the Shares under any state, federal or foreign law or under the rules and regulations of the Securities and Exchange Commission, the stock exchange on which Shares of the same class are then listed, or any other governmental or regulatory body, which authority, registration, qualification or rule compliance is deemed by the Company's counsel to be necessary or advisable for the issuance and sale of any Shares hereunder, will relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority, registration, qualification or rule compliance will not have been obtained.

24. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

Participant must notify the Company by the fifteenth (15th) day of the month following the Date of Grant if he or she wishes to reject this Option. Otherwise, Participant will be deemed to have accepted the Option on the terms and conditions on which it is offered.

Unless otherwise defined herein, the terms defined in the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan (the "Plan") will have the same defined meanings in this Stock Option Agreement (the "Agreement"), including the Notice of Stock Option Grant (the "Notice of Grant") and Terms and Conditions of Stock Option, attached hereto as Exhibit A.

NOTICE OF STOCK OPTION GRANT

Participant Name: _____

Address: _____

_____

Participant has been granted an Option to purchase Common Stock, subject to the terms and conditions of the Plan and this Agreement, as follows:

Grant Number _____

Date of Grant _____

Vesting Commencement Date _____

Number of Shares Granted _____

Exercise Price per Share $_____

Total Exercise Price $_____

Type of Option ___ Incentive Stock Option

___ Nonstatutory Stock Option

Term/Expiration Date _____

Vesting Schedule:

Subject to accelerated vesting as set forth below or in the Plan, this Option will be exercisable, in whole or in part, in accordance with the following schedule:

[Insert vesting schedule]

Termination Period:

This Option will be exercisable for three (3) months after Participant ceases to be a Service Provider, unless such termination is due to Participant's death or Disability, in which case this Option will be exercisable for twelve (12) months after Participant ceases to be a Service Provider. Notwithstanding the foregoing sentence, in no event may this Option be exercised after the Term/Expiration Date as provided above and may be subject to earlier termination as provided in Section 15(c) of the Plan.

If Participant does not wish to receive this Option and/or does not consent and agree to the terms and conditions on which the Option is offered, as set forth in the Plan and this Agreement, including the Terms and Conditions of Stock Option, attached hereto as Exhibit A, then Participant must reject the Option by notifying the Company at Accuray Incorporated, Attention Stock Administration, 1310 Chesapeake Terrace, Sunnyvale, CA 94089 no later than **the fifteenth (15th) day of the month following the Date of Grant**, in which case the Option will be cancelled. Participant's failure to notify the Company of his or her rejection of the Option within this specified period will constitute Participant's acceptance of the Option and his or her agreement with all terms and conditions of the Option, as set forth in the Plan and this Agreement, including the Terms and Conditions of Stock Option, attached hereto as Exhibit A, all of which are made a part of this document.

Participant has reviewed the Plan and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of the Plan and Agreement. Participant hereby agrees (i) to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and Agreement, (ii) to notify the Company upon any change in the residence address indicated below, and (iii) to the extent required by Section 6 of Exhibit A, the sale of Shares to cover the Tax Withholding Obligations (and any associated broker or other fees) and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express written consent.

ACCURAY INCORPORATED:

By: _____

Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF STOCK OPTION

1. Grant of Option. The Company hereby grants to Participant named in the Notice of Grant (the "Participant") an option (the "Option") to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the "Exercise Price"), subject to all of the terms and conditions in this Agreement and the Plan, which is incorporated herein by reference. Subject to Section 21(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Agreement, the terms and conditions of the Plan will prevail.

If designated in the Notice of Grant as an Incentive Stock Option ("ISO"), this Option is intended to qualify as an ISO under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). However, if this Option is intended to be an Incentive Stock Option, to the extent that it exceeds the $100,000 rule of Code Section 422(d) it will be treated as a Nonstatutory Stock Option ("NSO"). Further, if for any reason this Option (or portion thereof) will not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a NSO granted under the Plan. In no event will the Administrator, the Company or any Parent or Subsidiary of the Company or any of their respective employees or directors have any liability to Participant (or any other person) due to the failure of the Option to qualify for any reason as an ISO.

2. Vesting Schedule. Except as provided in Section 3, the Option awarded by this Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant. Shares scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Participant in accordance with any of the provisions of this Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

3. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested Option at any time, subject to the terms of the Plan. If so accelerated, such Option will be considered as having vested as of the date specified by the Administrator.

4. Exercise of Option.

(a) Right to Exercise. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.

(b) Method of Exercise. This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit C (the "Exercise Notice") or in a manner and pursuant to such procedures as the Administrator may determine, which will state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice will be completed by Participant and delivered to the Company. The Exercise Notice will be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares together with any applicable tax withholding. This Option will be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

5. Method of Payment. Payment of the aggregate Exercise Price will be by any of the following, or a combination thereof, at the election of Participant:

(c) cash;

(d) check;

(e) with the consent of the Administrator, consideration received by the Company under a broker-assisted (or other) cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan;

(f) with the consent of the Administrator, by net exercise;

(g) with the consent of the Administrator, surrender of other Shares which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares, provided that accepting such Shares, in the sole discretion of the Administrator, will not result in any adverse accounting consequences to the Company; or

(h) with the consent of the Administrator, such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

6. Tax Obligations.

(i) Withholding of Taxes.

Participant's Responsibility; Company's Obligation to Deliver Certificates. Participant acknowledges that, regardless of any action taken by the Company or, if different, Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant or deemed by the Company or the Employer in its discretion to be an appropriate charge to Participant even if legally applicable to the Company or the Employer ("Tax-Related Items"), is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer. Notwithstanding any contrary provision of this Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the Tax-Related Items. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of this Option, including, but not limited to, the grant, vesting or settlement of this Option, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalents; and (ii) do not commit to and are under no obligation to structure the terms of this Option or any aspect of this Option to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Tax Withholding Arrangements. Prior to any relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, by Participant's acceptance of this Option, Participant authorizes and directs the Company and any brokerage firm determined acceptable to the Company to sell on Participant's behalf a whole number of shares from those Shares issued to Participant as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the obligation for Tax-Related Items. **By accepting this Option, Participant expressly consents to the sale of Shares to cover Tax-Related Items and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express consent.** In the event that such withholding by sale of Shares is problematic under applicable tax or securities law or has materially adverse accounting consequences, Participant authorizes the Company or its respective agents to satisfy the obligations with regard to all Tax-Related Items by (i) delivery of already vested and owned Shares having a fair market value equal to the amount required to be withheld, (ii) withholding otherwise deliverable Shares having a value equal to the amount required to be withheld, (iii) cash payment, (iv) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer, or (v) such other means as the Administrator deems appropriate.

Depending on the withholding method, the Company or the Employer may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates, in which case Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the Share equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of

Shares subject to the exercised Options, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

(j) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Participant herein is an ISO, and if Participant sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (i) the date 2 years after the Date of Grant, or (ii) the date 1 year after the date of exercise, Participant will immediately notify the Company in writing of such disposition. Participant agrees that Participant may be subject to income tax withholding by the Company on the compensation income recognized by Participant.

(k) Code Section 409A. Under Code Section 409A, an option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the fair market value of a share on the date of grant (a "Discount Option") may be considered "deferred compensation." A Discount Option may result in (i) income recognition by Participant prior to the exercise of the option, (ii) an additional 20% federal income tax, and (iii) potential penalty and interest charges. The Discount Option may also result in additional state income, penalty and interest charges to Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the Exercise Price per Share of this Option equals or exceeds the Fair Market Value of a Share on the Date of Grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with an Exercise Price per Share that was less than the Fair Market Value of a Share on the Date of Grant, Participant will be solely responsible for Participant's costs related to such a determination.

7. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

8. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

9. Address for Notices. Any notice to be given to the Company under the terms of this Agreement will be addressed to the Company at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, Attn: Stock Administration, or at such other address as the Company may hereafter designate in writing.

10. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant.

11. Binding Agreement. Subject to the limitation on the transferability of this Option contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

12. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the purchase by, or issuance of Shares to, Participant (or his or her estate) hereunder, such purchase or issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange. Assuming such compliance, for income tax purposes the Exercised Shares will be considered transferred to Participant on the date the Option is exercised with respect to such Exercised Shares.

13. Plan Governs. This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Agreement will have the meaning set forth in the Plan.

14. Administrator Authority. The Administrator will have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Shares subject to the Option have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement.

15. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to Options awarded under the Plan or future options that may be awarded under the Plan(including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or request Participant’s consent to participate in the Plan by electronic means. Participant also agrees that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify Participant by electronic means.

16. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

17. Agreement Severable. In the event that any provision in this Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

18. Modifications to the Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A of the Code in connection to this Option.

19. Amendment, Suspension or Termination of the Plan. By accepting this Option, Participant expressly warrants that he or she has received an Option under the Plan, and has received, read and understood a description of

the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

20. Governing Law and Venue. This Agreement will be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Option or this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California**,** and agree that such litigation will be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Option is made and/or to be performed.

21. Additional Terms for Non-U.S. Participants. Notwithstanding any provisions in this Agreement, for Participants outside the United States, this Option shall be subject to the additional terms and conditions set forth in Exhibit B to this Agreement, including any additional terms and conditions for Participant's country. Moreover, if Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan. Exhibit B constitutes part of this Agreement.

22. Waiver. Participant acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by me or any other Participant of the Plan.

EXHIBIT B

TERMS AND CONDITIONS FOR INTERNATIONAL OPTIONS

This Exhibit B includes additional terms and conditions that govern the Option granted to Participant under the Plan. Further, this Exhibit B includes additional terms and conditions that govern the Option if Participant resides in one of the countries listed below.

NOTIFICATIONS

This Exhibit B also includes information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of June 2016. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the notification information may be out of date at the time Participant exercises the Option or sells Shares acquired under the Plan.

In addition, the notification information contained herein is general in nature and may not apply to Participant's particular situation, and the Company is not in a position to assure Participant of a particular result. Accordingly, Participant should seek appropriate professional advice as to how the relevant laws in his or her country may apply to Participant's situation.

Finally, if Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers employment and/or residency to another country after the Option is granted to Participant, or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to Participant.

A. ADDITIONAL TERMS AND CONDITIONS

1. Nature of Option. In accepting this Option, Participant acknowledges, understands and agrees to the following:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of this Option is exceptional, voluntary and occasional and does not create any contractual or other right to receive future Option grants, or benefits in lieu of Options, even if Options have been granted in the past;

(c) all decisions with respect to future Option grants, if any, will be at the sole discretion of the Company;

(d) this Option grant and Participant's participation in the Plan shall not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company and shall not interfere with the ability of the Employer to terminate Participant's employment or service relationship (if any) at any time;

(e) Participant is voluntarily participating in the Plan;

(f) this Option and the Shares subject to this Option is extraordinary items that are outside the scope of Participant's employment or service contract, if any;

(g) the Option and the Shares subject to this Option, and the income and value of the same, are not intended to replace any pension rights or compensation;

(h) this Option and the Shares subject to this Option is not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(i) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(j) if the underlying Shares do not increase in value, this Option will have no value;

(k) if Participant exercises this Option and acquires Shares, the value of such Shares may increase or decrease in value, even below the Exercise Price;

(l) no claim or entitlement to compensation or damages shall arise from forfeiture of this Option resulting from termination of Participant's employment or other service relationship by the Company or the Employer (for any reason whatsoever and whether or not later found to be invalid or in breach of any employment laws in the jurisdiction where Participant is employed or the terms of any employment or service agreement, if any), and in consideration of the grant of this Option, Participant agrees not to institute any claim against the Company or the Employer or any of the other Affiliates of the Company;

(m) unless otherwise agreed with the Company, this Option and the Shares subject to this Option, and the income and value of the same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of an Affiliate of the Company;

(n) in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Option under the Plan, if any, will terminate effective as of the date that Participant is no longer actively employed and will not be extended by any notice period mandated under local law (*e.g.*, active employment would not include a period of "garden leave" or similar period pursuant to local law); the Administrator shall have the exclusive discretion to determine when Participant is no longer actively employed for purposes of this Option; and

(o) neither the Company, the Employer nor any other Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Option or any amounts due to Participant pursuant to the settlement of the Option or the subsequent sale of any Shares acquired upon settlement.

2. No Advice Regarding Award. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant understands and agrees that Participant should to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

3. Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Agreement and any other Option grant materials by and among, as applicable, the Employer, the Company and its other Affiliates for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.

Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of the Option or any other entitlement to Shares awarded,

canceled, exercised, vested, unvested, or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

Participant understands that Data will be transferred to a plan broker or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration, and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have different data privacy laws and protections than Participant's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company, the broker, and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her employment status or service with the Employer will not be affected; the only consequence of refusing or withdrawing Participant's consent is that the Company would not be able to grant Participant Option or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

4. Language. If Participant has received this Agreement or any other document related to the Plan translated into a language other than English, and if the meaning of the translated version is different than the English version, the English version will control.

5. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the Option, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

6. Insider Trading Notification. Participant acknowledges that, depending on his or her country, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares or rights to shares (*e.g.*, the Option) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions, and Participant should speak to his or her personal advisor on this matter.

7. Foreign Asset/Account Reporting Notification. Participant understands that his or her country may have certain exchange control and/or foreign asset/account reporting requirements which may affect Participant's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends received or sale proceeds arising from the sale of Share) in a brokerage or bank account outside of Participant's country. Participant may be required to report such accounts, assets or transactions to the tax or other authorities in Participant's country. Participant acknowledges that it is his or her responsibility to comply with any applicable regulations, and Participant should speak to his or her personal advisor on this matter.

B. COUNTRY-SPECIFIC TERMS, CONDITIONS AND NOTIFICATIONS

CANADA

TERMS AND CONDITIONS

Termination of Employment. This provision replaces Section A.1(n) of this Exhibit B:

For purposes of the Option, in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Option under the Plan, if any, will terminate effective as of the date that is the earliest of (i) the date that Participant's employment with the Company, the Employer or any other Affiliate is terminated; (ii) the date Participant receives notice of termination of employment from the Company or the Employer (regardless of any notice period or period of pay in lieu of such notice required under Canadian employment law including, but not limited to, statutory law, regulatory law and/or common law); and (iii) the date Participant is no longer actively providing services to the Company or the Employer. The Administrator shall have the exclusive discretion to determine when Participant is no longer actively providing services to the Employer.

The following Terms and Conditions apply if Participant is a resident of Quebec:

Authorization to Release and Transfer Necessary Personal Information. This provision supplements Section A.3 of this Exhibit B:

Participant hereby authorizes the Company (including its Affiliates), the Employer and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company, any Affiliates, and any stock plan service provider that may be selected by the Company to assist with the Plan to disclose and discuss the Plan with their respective advisors. Participant further authorizes the Company, the Employer and any Affiliates to record such information and to keep such information in Participant's employee file.

French Language Provision. The parties acknowledge that it is their express wish that this Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les parties reconnaissent avoir exigé la redaction en anglais de cette convention ("Agreement"), *ainsi que de tous documents exécutés, avis donnés et procedures judiciaries intentées, directement ou indirectement, relativement à la présente convention.*

NOTIFICATIONS

Securities Law Information. Participant is permitted to sell Shares acquired under the Plan through the designated broker appointed under the Plan, if any, provided that the resale of such shares takes place outside of Canada through the facilities of a stock exchange on which the Shares are listed (*i.e.*, the NASDAQ Global Select Market)

Foreign Asset/Account Reporting Information. Foreign property, including Shares and Option, held by a Canadian resident must generally be reported annually on a Form T1135 (Foreign Income Verification Statement) if the total cost of Participant's foreign property exceeds C$100,000 at any time during the year. Thus the Option must be reported – generally at a nil cost - if the C$100,000 cost threshold is exceeded because other foreign property is held by the employee. When shares are acquired, their cost generally is the adjusted cost base ("ACB") of the shares. The ACB would ordinarily equal the fair market value of the shares at the time of acquisition, but if the employee owns other shares of the same company, this ACB may have to be averaged with the ACB of the other shares.

GERMANY

NOTIFICATIONS

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments in connection with securities (including proceeds realized upon the sale of Shares or the receipt of dividends), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically and the form of report ("*Allgemeine Meldeportal Statistik*") can be accessed via the Bundesbank's website (www.bundesbank.de), in both German and English. Participant is responsible for complying with the reporting requirements.

GREECE

NOTIFICATIONS

Exchange Control Notification. If Participant remits funds from Greece to purchase Shares under the Plan, he or she may need to make a submission to the bank, which requires the following data: (i) Participant's name, nationality, and address; (ii) the purpose of the transaction (i.e., purchase of Shares); (iii) the country of destination of the funds (*i.e.*, the Untied States); (iv) the value in foreign exchange and the equivalent in local currency; (v) Participant's tax registration number; (vi) Participant's statement that the transaction in question is not aimed at legalizing income deriving from criminal activity; and (vi) any other information the bank may require. If the amount being remitted is not more than €50,000, such a submission may not be required. In addition, if Participant uses a cashless exercise method to exercise his or her Option, Participant will not be required to make a submission to the bank.

Participant may buy any foreign currency and deposit the same in accounts in his or her name with any bank operating in Greece. When the Shares acquired under the Plan are sold, Participant is not required to convert the foreign exchange into local currency and Participant can deposit the proceeds in the foreign currency in Greece or abroad.

HONG KONG

TERMS AND CONDITIONS

Sale of Shares. Shares received at exercise are accepted as a personal investment. In the event the Option vests and is exercised within six months of the Date of Grant, Participant agrees that he or she will not offer to the public or otherwise dispose of the shares prior to the six-month anniversary of the Date of Grant.

NOTIFICATIONS

Securities Law Information: *Warning. The contents of the Agreement, including this Exhibit B, have not been reviewed by any regulatory authority in Hong Kong. Participant should exercise caution in relation to the offer. If Participant is in any doubt about any of the contents of the Agreement, including this Exhibit B, or the Plan, Participant should obtain independent professional advice. The Option and any Shares issued at exercise of the Option do not constitute a public offering of securities under Hong Kong law and are available only to employees of the Company or an Affiliate of the Company. The Agreement, including this Exhibit B, the Plan, the Notice of Grant, and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a "prospectus" for a public offering of securities under the applicable securities legislation in Hong Kong. The Option and any related documentation are intended only for the personal use of Participant and may not be distributed to any other person.*

ITALY

TERMS AND CONDITIONS

Method of Payment. This provision replaces Section 5of the Agreement:

The Exercise Price for the Shares as to which this Option is exercised shall be paid to the Company throughconsideration received by the Company under a broker-assisted (or other) cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan. The Company reserves the right to allow additional methods of payment depending on the development of local law.

Data Privacy Notice and Consent. This provision replaces in its entirety Section A.3 of this Exhibit B:

Participant understands that the Employer, the Company and any Affiliate of the Company may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any Affiliate of the Company, details of the Option or other entitlement to Shares granted, awarded, canceled, exercised, vested, unvested, or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, managing and administering the Plan.

Participant also understands that providing the Employer with Data is necessary for the performance of the Plan and that Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect Participant's ability to participate in the Plan. The Controller of personal data processing is Accuray Incorporated, with registered offices at 1310 Chesapeake Terrace, Sunnyvale, California 94089, United States of America, and, pursuant to Legislative Decree no. 196/2003, its representative in Italy.

Participant understands that Data will not be publicized, but it may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. Participant understands that Data may also be transferred to the Company's stock plan service provider or such other administrator that may be engaged by the Company in the future. Participant further understands that the Company and/or any Affiliate of the Company will transfer Data among themselves as necessary for the purpose of implementing, administering and managing Participant's participation in the Plan, and that the Company and/or any Affiliate of the Company may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom Participant may elect to deposit any Shares acquired at exercise of the Option. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing Participant's participation in the Plan. Participant understands that these recipients may be located in or outside the European Economic Area, such as in the United States or elsewhere. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

Participant understands that Data-processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require Participant's consent thereto, as the processing is necessary to performance of contractual obligations related to implementation, administration, and management of the Plan. Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, Participant has the right to, including but not limited to, access, delete, update, correct, or terminate, for legitimate reason, the Data processing.

Furthermore, Participant is aware that Data will not be used for direct marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting Participant's local human resources representative.

Plan Document Acknowledgment. In accepting the grant of the Option, Participant acknowledges that he or she has received a copy of the Plan and the Agreement and has reviewed the Plan and the Agreement, including this Exhibit B, in their entirety and fully understands and accepts all provisions of the Plan and the Agreement, including this Exhibit B.

Participant acknowledges that he or she has read and specifically and expressly approves the following sections of the Agreement: Section 3 on Vesting and Termination; Section 6 on Tax Withholding; Section 20 on Governing Law and Venue; Section A.1 of this Exhibit B on Nature of Award; Section A.4 of this Exhibit B on Language; and the Data Privacy Notice and Consent section included in this Exhibit B.

NOTIFICATIONS

Exchange Control Information. Italian residents who, at any time during the fiscal year, hold foreign financial assets (*e.g.*, cash, Shares, etc.) which may generate income taxable in Italy are required to report such investments or assets on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad.

JAPAN

NOTIFICATIONS

Exchange Control Information**.** Japanese residents that acquire Shares valued at more than ¥100,000,000 in a single transaction must file a Securities Acquisition Report with the Ministry of Finance through the Bank of Japan within 20 days of the acquisition of the Shares.

In addition, if a Japanese resident pays more than ¥30,000,000 in a single transaction for the purchase of Shares when at exercise of an Option, he or she must file a Payment Report with the Ministry of Finance through the Bank of Japan within 20 days of the date that the payment is made. The precise reporting requirements vary depending on whether or not the relevant payment is made through a bank in Japan.

Please note that a Payment Report is required independently from a Securities Acquisition Report; therefore, a Japanese resident must file both a Payment Report and a Securities Acquisition Report if the total amount that he or she pays in a single transaction for exercising the Option and purchasing Shares exceeds ¥100,000,000.

Foreign Asset/Account Reporting Information. Japanese residents are required to report details of any assets held outside Japan as of December 31, including Shares acquired under the Plan, to the extent such assets have a total net fair market value exceeding ¥50,000,000. Such report will be due by March 15 each year. Participant is responsible for complying with this reporting obligation if applicable and Participant should consult his or her personal tax advisor in this regard.

NETHERLANDS

There are no country-specific provisions.

SINGAPORE

NOTIFICATIONS

Restriction on Sale of Shares. To the extent Participant sells, offers to sell or otherwise disposes of Shares acquired under the Plan within six months of the date of grant, Participant is permitted to dispose of such shares

through any designated broker appointed under the Plan, provided the resale of Shares acquired under the Plan takes place outside Singapore through the facilities of a stock exchange on which the Shares are listed. The Company's shares are currently listed on the NASDAQ Global Select Market.

Securities Law Information. The Option is being made to Participant in reliance on the "Qualifying Person" exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA"). The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Participant should note that the Option is subject to section 257 of the SFA, and Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the Option, unless such sale or offer in Singapore is made (i) after six months from the Date of Grant or (ii) pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA.

Chief Executive Officer and Director Notification Obligation. If Participant is the Chief Executive Officer, or a director, associate director, or shadow director of the Company's Singapore Affiliate, Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Company's Singapore Affiliate in writing when Participant receives an interest (*e.g.*, Option or Shares) in the Company or any Affiliate of the Company. In addition, Participant must notify the Company's Singapore Affiliate when he or she sells Shares the Company or of any Affiliate of the Company (including when Participant sells Shares issued upon exercise of the Option). These notifications must be made within two days of acquiring or disposing of any interest in the Company or any Affiliate of the Company. In addition, a notification of Participant's interests in the Company or any Affiliate of the Company must be made within two days of becoming the Chief Executive Officer or a director.

SWITZERLAND

NOTIFICATIONS

Securities Law Information. The Option is not intended to be a public offering in or from Switzerland. Neither this document nor any other materials relating to the offer constitutes a prospectus as such term is understood pursuant to article 652a of the Swiss Code of Obligations, and their this document nor any other materials relating to the grant may be publicly distributed or otherwise made publicly available in Switzerland. Neither this document nor any other offering or marketing material relating to the Plan has been or will be filed with, approved or supervised by any Swiss regulatory authority (in particular, the Swiss financial Market Supervisory Authority).

UNITED ARAB EMIRATES

NOTIFICATIONS

Securities Law Information. Participation in the Plan is being offered only to Employees and Consultants of the Company and its Affiliates, and is in the nature of providing equity incentives to those providing services in the United Arab Emirates. The Plan and the Agreement are intended for distribution only to such Participants and must not be delivered to, or relied on by, any other person. Participant should conduct Participant's own due diligence on the securities. If Participant does not understand the contents of the Plan or the Agreement, Participant should consult an authorized financial adviser. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan, and neither the Ministry of Economy nor the Dubai Department of Economic Development has approved the Plan or the Agreement, nor taken any steps to verify the information set out therein and has any responsibility for such documents.

UNITED KINGDOM

TERMS AND CONDITIONS

Tax Withholding. This provision supplements Section 6 of the Agreement:

If payment or withholding of the Tax-Related Items is not made within ninety (90) days of the end of the U.K. tax year in which the event giving rise to the liability for income tax (the "Due Date") occurs, or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected income tax may constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("HMRC"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 6 of the Agreement.

Notwithstanding the foregoing, Participant understands and agrees that if he or she is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the income tax liability. In the event that Participant is a director or executive officer and income tax is not collected from or paid by Participant by the Due Date, Participant understands that the amount of any uncollected Tax-Related Items may constitute a benefit to Participant on which additional income tax and national insurance contributions ("NICs") may be payable. Participant understands and agrees that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Employer (as appropriate) for the value of any employee NICs due on this additional benefit which the Company or the Employer may recover from Participant by any of the means referred to in Section 6 of the Agreement.

EXHIBIT C

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

EXERCISE NOTICE

Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089

Attention: Stock Administration

1. Exercise of Option. Effective as of today, _____, _____, the undersigned ("Purchaser") hereby elects to purchase _____ shares (the "Shares") of the Common Stock of Accuray Incorporated (the "Company") under and pursuant to the Amended and Restatedf 2016 Equity Incentive Plan (the "Plan") and the Stock Option Agreement dated _____ (the "Agreement"). The purchase price for the Shares will be $_____, as required by the Agreement.

2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price of the Shares and any required tax withholding to be paid in connection with the exercise of the Option.

3. Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Plan and the Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to the Option, notwithstanding the exercise of the Option. The Shares so acquired will be issued to Purchaser as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 15 of the Plan.

5. Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

6. Entire Agreement; Governing Law. The Plan and Agreement are incorporated herein by reference. This Exercise Notice, the Plan and the Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.

Submitted by:	Accepted by:
	ACCURAY INCORPORATED
_____	_____
Signature	By

Print Name

Its

Address:

Date Received

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

PERFORMANCE UNIT AGREEMENT

Participant must notify the Company by the fifteenth (15th) day of the month following the Date of Grant if he or she wishes to reject this Award. Otherwise, Participant will be deemed to have accepted the Award on the terms and conditions on which it is offered.

Unless otherwise defined herein, the terms defined in the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan (the "Plan") will have the same defined meanings in this Performance Unit Agreement (the "Award Agreement"), which includes the Notice of Grant of Performance Unit Award (the "Notice of Grant") and Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A.

NOTICE OF GRANT OF PERFORMANCE UNIT AWARD

Participant Name:

Address:

Participant has been granted the right to receive an Award of Performance Units ("PSUs"), subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Grant Number _____

Date of Grant _____

Number of PSUs _____

Vesting Schedule:

For purposes of this Award Agreement, the Performance Period shall be the period commencing on the first day of the Company's [__] fiscal year and ending on June 30, [__].

Subject to Section 3 of Exhibit A and any acceleration provisions contained in the Plan or set forth below, the PSUs will vest in accordance with the following schedule:

[Insert Vesting Schedule]

In the event Participant ceases to be a Service Provider for any or no reason before Participant vests in the PSUs, the PSUs and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

If Participant does not wish to receive this Award and/or does not consent and agree to the terms and conditions on which the Award is offered, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A, then Participant must reject the Award by notifying the Company at Accuray Incorporated, Attention Stock Administration, 1310 Chesapeake Terrace, Sunnyvale, CA 94089 no later than **the fifteenth (15th) day of the month following the Date of Grant**, in which case the Award will be cancelled. Participant's failure to notify the Company of his or her rejection of the Award within this specified period will constitute Participant's acceptance of the Award and his or her agreement with all terms and conditions of the Award, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A, all of which are made a part of this document.

Participant has reviewed the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel, and fully understands all provisions of the Plan and Award Agreement. By accepting this Award, Participant hereby agrees (i) to accept as binding, conclusive, and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and the Award Agreement, (ii) to notify the Company upon any change in the residence address indicated above, and (iii) to the extent required by Section 7 of Exhibit A, the sale of Shares to cover the Tax-Related Items (and any associated broker or other fees) and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express written consent.

ACCURAY INCORPORATED:

By: _____

Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF PERFORMANCE UNIT AWARD

1. Grant. The Company hereby grants to the individual named in the Notice of Grant (the "Participant") under the Plan an Award of PSUs, subject to all of the terms and conditions in this Award Agreement and the Plan, which is incorporated herein by reference. Subject to Section 21(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Award Agreement, the terms and conditions of the Plan will prevail.

2. Company's Obligation to Pay. Each PSU represents the right to receive a Share on the date it vests. Unless and until the PSUs will have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such PSUs. Prior to actual payment of any vested PSUs, such PSUs will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any PSUs that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant's death, to his or her estate) in whole Shares, subject to Participant satisfying any applicable tax withholding obligations as set forth in Section 7. Subject to the provisions of Section 4, such vested PSUs shall be paid in whole Shares as soon as practicable after vesting, but in each such case within the period sixty (60) days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any PSUs payable under this Award Agreement.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the PSUs awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant; provided, however, that (i) if a Vesting Date falls on a day upon which the U.S. national securities markets are not open for trading, such Vesting Date shall be delayed until the next trading day, and (ii) if a Vesting Date falls on December 31, such Vesting Date shall be delayed until the next trading day such that the Vesting Date, any sale to cover taxes, and applicable tax reporting all occur in the same calendar year. PSUs scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in accordance with any of the provisions of this Award Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested PSUs at any time, subject to the terms of the Plan. If so accelerated, such PSUs will be considered as having vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the PSUs is accelerated in connection with Participant's termination as a Service Provider (provided that such termination is a "separation from service" within the meaning of Section 409A, as determined by the Company), other than due to death**,** and if (x) Participant is a "specified employee" within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated PSUs will result in the imposition of additional tax under Section 409A if paid to Participant on or within the six (6) month period following Participant's termination as a Service Provider, then the payment of such accelerated PSUs will not be made until the date six (6) months and one (1) day following the date of Participant's termination as a Service Provider, unless Participant dies following his or her termination as a Service Provider, in which case, the PSUs will be paid in Shares to Participant's estate as soon as practicable following his or her death. It is the intent of this Award Agreement that it and all payments and benefits hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the PSUs provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Award Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). For purposes of this Award Agreement, "Section 409A" means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture upon Termination of Status as a Service Provider. Notwithstanding any contrary provision of this Award Agreement, the balance of the PSUs that have not vested as of the time of Participant's termination as a Service Provider for any or no reason and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to Participant's designated beneficiary, or if no beneficiary survives Participant, the administrator or executor of Participant's estate. Any such transferee must furnish the Company with (i) written notice of his or her status as transferee, and (ii) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Withholding of Taxes.

(a) Participant's Responsibility; Company's Obligation to Deliver Certificates. Participant acknowledges that, regardless of any action taken by the Company or, if different, Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant or deemed by the Company or the Employer in its discretion to be an appropriate charge to Participant even if legally applicable to the Company or the Employer ("Tax-Related Items"), is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer. Notwithstanding any contrary provision of this Award Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the Tax-Related Items. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting or settlement of the PSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalents; and (ii) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) Tax Withholding Arrangements. Prior to any relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, by Participant's acceptance of the Award, Participant authorizes and directs the Company and any brokerage firm determined acceptable to the Company to sell on Participant's behalf a whole number of shares from those Shares issued to Participant as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the obligation for Tax-Related Items. **By accepting this Award, Participant expressly consents to the sale of Shares to cover Tax-Related Items and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express consent.** In the event that such withholding by sale of Shares is problematic under applicable tax or securities law or has materially adverse accounting consequences, Participant authorizes the Company or its respective agents to satisfy the obligations with regard to all Tax-Related Items by (i) delivery of already vested and owned Shares having a fair market value equal to the amount required to be withheld, (ii) withholding otherwise deliverable Shares having a value equal to the amount required to be withheld, (iii) cash payment, (iv) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer, or (v) such other means as the Administrator deems appropriate.

Depending on the withholding method, the Company or the Employer may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates, in which case Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the Share equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of Shares subject

to the vested PSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

8. Restrictions on Resale. Participant agrees not to sell any PSU Shares at a time when Applicable Laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as Participant's status as a Service Provider continues and for such period of time after the termination of Participant's status as a Service Provider as the Company may specify.

9. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE PERFORMANCE UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF PERFORMANCE UNITS OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Adjustments. In the event of a stock split, a stock dividend or a similar change in Company stock, the number of unvested PSUs awarded to Participant under this Award Agreement will be adjusted in accordance with the Plan.

12. Address for Notices. Any notice to be given to the Company under the terms of this Award Agreement will be addressed to the Company at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, Attn: Stock Administration, or at such other address as the Company may hereafter designate in writing.

13. Award is Not Transferable. Except to the limited extent provided in Section 6, this Award and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this Award and the rights and privileges conferred hereby immediately will become null and void. Participant may, however, dispose of this Award in Participant's will or through a beneficiary designation.

14. Binding Agreement. Subject to the limitation on the transferability of this Award contained herein, this Award Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

15. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

16. Plan Governs. This Award Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Award Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

17. Administrator Authority. The Administrator will have the power to interpret the Plan and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any PSUs have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

18. Electronic Delivery. Participant agrees that the Company may deliver by electronic means all documents relating to the Plan, the PSUs, or future performance units that may be awarded under the Plan (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or request Participant's consent to participate in the Plan by electronic means. Participant also agrees that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify Participant by electronic means.

19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

20. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

21. Modifications to the Award Agreement. This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of PSUs.

22. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Award of PSUs under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

23. Governing Law and Venue. This Award Agreement will be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Award of PSUs or this Award Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California**,** and agree that such litigation will be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Award of PSUs is made and/or to be performed.

24. Additional Terms for Non-U.S. Participants. Notwithstanding any provisions in this Award Agreement, for Participants outside the United States, this Award of PSUs shall be subject to the additional terms and conditions set forth in Exhibit B to this Award Agreement, including any additional terms and conditions for Participant's country. Moreover, if Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan. Exhibit B constitutes part of this Award Agreement.

25. Waiver. Participant acknowledges that a waiver by the Company of breach of any provision of this Award Agreement shall not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by me or any other Participant of the Plan.

EXHIBIT B

TERMS AND CONDITIONS FOR INTERNATIONAL AWARDS

This Exhibit B includes additional terms and conditions that govern the Restricted Stock Units granted to Participant under the Plan. Further, this Exhibit B includes additional terms and conditions that govern the Restricted Stock Units if Participant resides in one of the countries listed below.

NOTIFICATIONS

This Exhibit B also includes information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of June 2016. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the notification information may be out of date at the time the Restricted Stock Units vest or Participant sells Shares acquired under the Plan.

In addition, the notification information contained herein is general in nature and may not apply to Participant's particular situation, and the Company is not in a position to assure Participant of a particular result. Accordingly, Participant should seek appropriate professional advice as to how the relevant laws in his or her country may apply to Participant's situation.

Finally, if Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers employment and/or residency to another country after the Restricted Stock Units are granted to Participant, or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to Participant.

A. ADDITIONAL TERMS AND CONDITIONS

1. Nature of Award. In accepting this Award of Restricted Stock Units, Participant acknowledges, understands and agrees to the following:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of this Award of Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future awards of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;

(c) all decisions with respect to future Restricted Stock Unit awards, if any, will be at the sole discretion of the Company;

(d) the Restricted Stock Unit grant and Participant's participation in the Plan shall not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company and shall not interfere with the ability of the Employer to terminate Participant's employment or service relationship (if any) at any time;

(e) Participant is voluntarily participating in the Plan;

(f) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are extraordinary items that are outside the scope of Participant's employment or service contract, if any;

(g) the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not intended to replace any pension rights or compensation;

(h) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(i) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from termination of Participant's employment or other service relationship by the Company or the Employer (for any reason whatsoever and whether or not later found to be invalid or in breach of any employment laws in the jurisdiction where Participant is employed or the terms of any employment or service agreement, if any), and in consideration of the grant of this Award of Restricted Stock Units, Participant agrees not to institute any claim against the Company or the Employer or any of the other Affiliates of the Company;

(k) unless otherwise agreed with the Company, the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of an Affiliate of the Company;

(l) in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that Participant is no longer actively employed and will not be extended by any notice period mandated under local law (*e.g.*, active employment would not include a period of "garden leave" or similar period pursuant to local law); the Administrator shall have the exclusive discretion to determine when Participant is no longer actively employed for purposes of this Award of Restricted Stock Units; and

(m) neither the Company, the Employer nor any other Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or any amounts due to Participant pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any Shares acquired upon settlement.

2. No Advice Regarding Award. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant understands and agrees that Participant should to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

3. Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Award Agreement and any other Restricted Stock Unit grant materials by and among, as applicable, the Employer, the Company and its other Affiliates for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.

Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

Participant understands that Data will be transferred to a plan broker or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration, and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have

different data privacy laws and protections than Participant's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company, the broker, and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her employment status or service with the Employer will not be affected; the only consequence of refusing or withdrawing Participant's consent is that the Company would not be able to grant Participant Restricted Stock Units or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

4. Language. If Participant has received this Award Agreement or any other document related to the Plan translated into a language other than English, and if the meaning of the translated version is different than the English version, the English version will control.

5. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the Restricted Stock Units, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

6. Insider Trading Notification. Participant acknowledges that, depending on his or her country, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares or rights to shares (*e.g.*, Restricted Stock Units) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions, and Participant should speak to his or her personal advisor on this matter.

7. Foreign Asset/Account Reporting Notification. Participant understands that his or her country may have certain exchange control and/or foreign asset/account reporting requirements which may affect Participant's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends received or sale proceeds arising from the sale of Share) in a brokerage or bank account outside of Participant's country. Participant may be required to report such accounts, assets or transactions to the tax or other authorities in Participant's country. Participant acknowledges that it is his or her responsibility to comply with any applicable regulations, and Participant should speak to his or her personal advisor on this matter.

B. COUNTRY-SPECIFIC TERMS, CONDITIONS AND NOTIFICATIONS

BELGIUM

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Participant is required to report any securities (*e.g.*, Shares acquired under the Plan) held or bank accounts opened (including brokerage accounts) opened and maintained outside Belgium on his or her annual tax return. In a separate report, Participant will be required to provide the National Bank of Belgium with certain details regarding such foreign accounts (including the account number, bank name and country

in which any such account was opened). This report, as well as information on how to complete it, can be found on the website of the National Bank of Belgium.

CANADA

TERMS AND CONDITIONS

Form of Settlement. If Participant is resident in Canada, Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

Termination of Employment. This provision replaces Section A.1(l) of this Exhibit B:

For purposes of the Restricted Stock Units, in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that is the earliest of (i) the date that Participant's employment with the Company, the Employer or any other Affiliate is terminated; (ii) the date Participant receives notice of termination of employment from the Company or the Employer (regardless of any notice period or period of pay in lieu of such notice required under Canadian employment law including, but not limited to, statutory law, regulatory law and/or common law); and (iii) the date Participant is no longer actively providing services to the Company or the Employer. The Administrator shall have the exclusive discretion to determine when Participant is no longer actively providing services to the Employer.

The following Terms and Conditions apply if Participant is a resident of Quebec:

Authorization to Release and Transfer Necessary Personal Information. This provision supplements Section A.3 of this Exhibit B:

Participant hereby authorizes the Company (including its Affiliates), the Employer and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company, any Affiliates, and any stock plan service provider that may be selected by the Company to assist with the Plan to disclose and discuss the Plan with their respective advisors. Participant further authorizes the Company, the Employer and any Affiliates to record such information and to keep such information in Participant's employee file.

French Language Provision. The parties acknowledge that it is their express wish that this Award Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les parties reconnaissent avoir exigé la redaction en anglais de cette convention ("Award Agreement"), *ainsi que de tous documents exécutés, avis donnés et procedures judiciaries intentées, directement ou indirectement, relativement à la présente convention.*

NOTIFICATIONS

Securities Law Information. Participant is permitted to sell Shares acquired under the Plan through the designated broker appointed under the Plan, if any, provided that the resale of such shares takes place outside of Canada through the facilities of a stock exchange on which the Shares are listed (*i.e.*, the NASDAQ Global Select Market)

Foreign Asset/Account Reporting Information. Foreign property, including Shares and Restricted Stock Units, held by a Canadian resident must generally be reported annually on a Form T1135 (Foreign Income Verification Statement) if the total cost of Participant's foreign property exceeds C$100,000 at any time during the year. Thus Restricted Stock Units must be reported – generally at a nil cost - if the C$100,000 cost threshold is exceeded because other foreign property is held by the employee. When shares are acquired, their cost generally is the adjusted cost base ("ACB") of the shares. The ACB would ordinarily equal the fair market value of the shares at the time of acquisition,

but if the employee owns other shares of the same company, this ACB may have to be averaged with the ACB of the other shares.

GERMANY

NOTIFICATIONS

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments in connection with securities (including proceeds realized upon the sale of Shares or the receipt of dividends), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically and the form of report ("*Allgemeine Meldeportal Statistik*") can be accessed via the Bundesbank's website (www.bundesbank.de), in both German and English. Participant is responsible for complying with the reporting requirements.

GREECE

There are no country-specific provisions.

HONG KONG

TERMS AND CONDITIONS

Sale of Shares. Shares received at vesting are accepted as a personal investment. In the event the Restricted Stock Units vest within six months of the Date of Grant, Participant agrees that he or she will not offer to the public or otherwise dispose of the shares prior to the six-month anniversary of the Date of Grant.

Form of Settlement. The Award of Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

NOTIFICATIONS

Securities Law Information: *Warning. The contents of the Award Agreement, including this Exhibit B, have not been reviewed by any regulatory authority in Hong Kong. Participant should exercise caution in relation to the offer. If Participant is in any doubt about any of the contents of the Award Agreement, including this Exhibit B, or the Plan, Participant should obtain independent professional advice. The Restricted Stock Units and any Shares issued at vesting of the Restricted Stock Units do not constitute a public offering of securities under Hong Kong law and are available only to employees of the Company or an Affiliate of the Company. The Award Agreement, including this Exhibit B, the Plan, the Notice of Grant, and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a "prospectus" for a public offering of securities under the applicable securities legislation in Hong Kong. The Restricted Stock Units and any related documentation are intended only for the personal use of Participant and may not be distributed to any other person.*

ITALY

TERMS AND CONDITIONS

Data Privacy Notice and Consent. This provision replaces in its entirety Section A.3 of this Exhibit B:

Participant understands that the Employer, the Company and any Affiliate of the Company may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any Affiliate of the Company, details of all Restricted Stock Units or other entitlement to Shares granted, awarded, canceled, vested, unvested or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, managing and administering the Plan.

Participant also understands that providing the Employer with Data is necessary for the performance of the Plan and that Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect Participant's ability to participate in the Plan. The Controller of personal data processing is Accuray Incorporated, with registered offices at 1310 Chesapeake Terrace, Sunnyvale, California 94089, United States of America, and, pursuant to Legislative Decree no. 196/2003, its representative in Italy.

Participant understands that Data will not be publicized, but it may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. Participant understands that Data may also be transferred to the Company's stock plan service provider or such other administrator that may be engaged by the Company in the future. Participant further understands that the Company and/or any Affiliate of the Company will transfer Data among themselves as necessary for the purpose of implementing, administering and managing Participant's participation in the Plan, and that the Company and/or any Affiliate of the Company may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom Participant may elect to deposit any Shares acquired at vesting of the Restricted Stock Units. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing Participant's participation in the Plan. Participant understands that these recipients may be located in or outside the European Economic Area, such as in the United States or elsewhere. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

Participant understands that Data-processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require Participant's consent thereto, as the processing is necessary to performance of contractual obligations related to implementation, administration, and management of the Plan. Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, Participant has the right to, including but not limited to, access, delete, update, correct, or terminate, for legitimate reason, the Data processing.

Furthermore, Participant is aware that Data will not be used for direct marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting Participant's local human resources representative.

Plan Document Acknowledgment. In accepting the grant of the Restricted Stock Units, Participant acknowledges that he or she has received a copy of the Plan and the Award Agreement and has reviewed the Plan and the Award Agreement, including this Exhibit B, in their entirety and fully understands and accepts all provisions of the Plan and the Award Agreement, including this Exhibit B.

Participant acknowledges that he or she has read and specifically and expressly approves the following sections of the Award Agreement: Section 3 on Vesting and Termination; Section 7 on Tax Withholding; Section 23 on Governing Law and Venue; Section A.1 of this Exhibit B on Nature of Award; Section A.4 of this Exhibit B on Language; and the Data Privacy Notice and Consent section included in this Exhibit B.

NOTIFICATIONS

Exchange Control Information. Italian residents who, at any time during the fiscal year, hold foreign financial assets (*e.g.*, cash, Shares, etc.) which may generate income taxable in Italy are required to report such investments or assets on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad.

JAPAN

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Japanese residents are required to report details of any assets held outside Japan as of December 31, including Shares acquired under the Plan, to the extent such assets have a total net fair market value exceeding ¥50,000,000. Such report will be due by March 15 each year. Participant is responsible for complying with this reporting obligation if applicable and Participant should consult his or her personal tax advisor in this regard.

NETHERLANDS

There are no country-specific provisions.

SINGAPORE

NOTIFICATIONS

Restriction on Sale of Shares. To the extent Participant sells, offers to sell or otherwise disposes of Shares acquired under the Plan within six months of the date of grant, Participant is permitted to dispose of such shares through any designated broker appointed under the Plan, provided the resale of Shares acquired under the Plan takes place outside Singapore through the facilities of a stock exchange on which the Shares are listed. The Company's shares are currently listed on the NASDAQ Global Select Market.

Securities Law Information. The Award of Restricted Stock Units is being made to Participant in reliance on the "Qualifying Person" exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA"). The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Participant should note that the Award of Restricted Stock Units is subject to section 257 of the SFA, and Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the Restricted Stock Units, unless such sale or offer in Singapore is made (i) after six months from the Date of Grant or (ii) pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA.

Chief Executive Officer and Director Notification Obligation. If Participant is the Chief Executive Officer, or a director, associate director, or shadow director of the Company's Singapore Affiliate, Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Company's Singapore Affiliate in writing when Participant receives an interest (*e.g.*, Restricted Stock Units or Shares) in the Company or any Affiliate of the Company. In addition, Participant must notify the Company's Singapore Affiliate when he or she sells Shares the Company or of any Affiliate of the Company (including when Participant sells Shares issued upon vesting of the Restricted Stock Units). These notifications must be made within two days of acquiring or disposing of any interest in the Company or any Affiliate of the Company. In addition, a notification of Participant's interests in the Company or any Affiliate of the Company must be made within two days of becoming the Chief Executive Officer or a director.

SWITZERLAND

NOTIFICATIONS

Securities Law Information. The Award of Restricted Stock Units is not intended to be a public offering in or from Switzerland. Neither this document nor any other materials relating to the offer constitutes a prospectus as such term is understood pursuant to article 652a of the Swiss Code of Obligations, and their this document nor any other materials relating to the grant may be publicly distributed or otherwise made publicly available in Switzerland. Neither this document nor any other offering or marketing material relating to the Plan has been or will be filed with, approved or supervised by any Swiss regulatory authority (in particular, the Swiss financial Market Supervisory Authority).

UNITED ARAB EMIRATES

NOTIFICATIONS

Securities Law Information. Participation in the Plan is being offered only to Employees and Consultants of the Company and its Affiliates, and is in the nature of providing equity incentives to those providing services in the United Arab Emirates. The Plan and the Award Agreement are intended for distribution only to such Participants and must not be delivered to, or relied on by, any other person. Participant should conduct Participant's own due diligence on the securities. If Participant does not understand the contents of the Plan or the Award Agreement, Participant should consult an authorized financial adviser. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan, and neither the Ministry of Economy nor the Dubai Department of Economic Development has approved the Plan or the Award Agreement, nor taken any steps to verify the information set out therein and has any responsibility for such documents.

UNITED KINGDOM

TERMS AND CONDITIONS

Tax Withholding. This provision supplements Section 7 of the Award Agreement:

If payment or withholding of the Tax-Related Items is not made within ninety (90) days of the end of the U.K. tax year in which the event giving rise to the liability for income tax (the "Due Date") occurs, or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected income tax may constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("HMRC"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 7 of the Award Agreement.

Notwithstanding the foregoing, Participant understands and agrees that if he or she is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the income tax liability. In the event that Participant is a director or executive officer and income tax is not collected from or paid by Participant by the Due Date, Participant understands that the amount of any uncollected Tax-Related Items may constitute a benefit to Participant on which additional income tax and national insurance contributions ("NICs") may be payable. Participant understands and agrees that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Employer (as appropriate) for the value of any employee NICs due on this additional benefit which the Company or the Employer may recover from Participant by any of the means referred to in Section 7 of the Award Agreement.

ACCURAY INCORPORATED

AMENDED & RESTATED 2016 EQUITY INCENTIVE PLAN

PERFORMANCE UNIT AGREEMENT FOR FY17 MSU PROGRAM

Participant must notify the Company within one (1) month following the Date of Grant if he or she wishes to reject this Award. Otherwise, Participant will be deemed to have accepted the Award on the terms and conditions on which it is offered.

Unless otherwise defined herein, the terms defined in the Accuray Incorporated 2016 Equity Incentive Plan (the "**Plan**") will have the same defined meanings in this Performance Unit Agreement (the "**Award Agreement**"), which includes the Notice of Grant of Performance Unit Award (the "**Notice of Grant**") and Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A.

NOTICE OF GRANT OF PERFORMANCE UNIT AWARD

Participant Name:

Address:

Participant has been granted the right to receive an Award of market-based Performance Units ("**MSUs**"), subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Grant Number

Date of Grant

Target Award

Maximum Award (up to a maximum of 150% of the Target Award)

Vesting Schedule:

The Performance Periods for this Award shall be as follows: the "**First Performance Period**" shall be the period commencing on November 1, 2016 and ending on October 31, 2018, and the "**Second Performance Period**" shall be the period commencing on November 1, 2016 and ending on October 31, 2019.

For purposes of this Award Agreement, the "**Benchmark**" shall mean the Russell 2000 Index. "**Benchmark Performance**" shall mean the total return of the Benchmark for the relevant Performance Period. The total return of the Benchmark shall be calculated as follows: the average closing price for the last three (3) months of the Performance Period (i.e., August 1 – October 31 of the applicable calendar year) ("**Ending Quarter**") minus the average closing price for the three months preceding the first day of the Performance Period (i.e., August 1 – October 31 of the applicable calendar year) ("**Beginning Quarter**") divided by the average closing price for the Beginning Quarter.

- Sample calculation of Benchmark Performance:
    - *Ending Quarter average closing price of 690 – Beginning Quarter average closing price of 600 / Beginning Quarter average closing price of 600 = Benchmark Performance of 15%*

For purposes of this Award Agreement, "**Company Performance**" shall mean the total shareholder return ("**TSR**") of the Common Stock for the relevant Performance Period. The TSR shall be calculated as follows: the

average closing price for the Beginning Quarter minus the average closing price for the Ending Quarter plus any dividends paid, divided by the average closing price for the Beginning Quarter.

- Sample calculation of Company Performance, assuming no dividends are paid:
  - *Ending Quarter average closing price of $9 – Beginning Quarter average closing price of $6 / Beginning Quarter average closing price of $6 = Company Performance of 50%*

For purposes of this Award Agreement, "**Vesting Date**" shall mean the date on which the Administrator certifies the Company Performance for the relevant Performance Period. Such certification date shall occur not later than sixty (60) days following the end of any Performance Period, unless otherwise specified by the Change in Control provisions below. The Target Award shall be divided into two equal tranches, with one tranche assigned to each Performance Period. For each tranche, the actual number of MSUs that will vest will be determined by the Administrator based on the Company Performance for the applicable Performance Period relative to the Benchmark Performance for the applicable Performance Period and will range from 0% to 150% of the portion of the Target Award allocated to such tranche.

For purposes of this Award Agreement, "**Target Performance**" shall mean the Benchmark Performance. For each tranche, vesting of the entire portion of the Target Award allocated to such tranche requires the Company Performance for the applicable Performance Period to be equal to the Target Performance for the applicable Performance Period. If the Company Performance for the Performance Period (a) is a percentage that is less than or equal to zero and (b) exceeds the Target Performance for the Performance Period, then 100% of the Target Award allocated to such tranche will vest. If the Company Performance for the Performance Period (a) is a percentage greater than zero and (b) exceeds the Target Performance for the Performance Period, then (y) an above-target number of MSUs in the tranche will vest, up to a maximum of 150% of the portion of the Target Award allocated to the tranche (the "**Maximum Award**") and (z) a multiple of two (2) will be applied to the percentage points by which Company Performance for the Performance Period exceeds Target Performance for the Performance Period to calculate the exact number of MSUs in the tranche that vest. If Company Performance for the Performance Period is less than the Target Performance for the Performance Period, a multiple of three (3) will be applied to the percentage points by which Company Performance for the Performance Period trails the Target Performance for the Performance Period to calculate the exact number of MSUs in the tranche that vest.

The following are sample calculations for the First Performance Period:

- Example of Company Performance that is less than or equal to zero and exceeds the Target Performance:
  - For the First Performance Period, Company Performance is -10%, Benchmark Performance is -15%, and Target Performance is -15%.
  - (Company Performance of -10% – Target Performance of -15%) = 5%
  - 100% x Target Award = MSUs vested
  - *The Target Award of MSUs for the First Performance Period is 500, 500 MSUs (100% x 500) will vest for the first Performance Period.*

- Example of Company Performance that is greater than zero and exceeds the Target Performance:
  - For the First Performance Period, Company Performance is 40%, Benchmark Performance is 15%, and Target Performance is 15%.
  - (Company Performance of 40% – Target Performance of 15%) = 25%
  - (25% x multiple of 2) + 100% of Target Award = 150%
  - 150% x Target Award = MSUs vested
  - *The Target Award of MSUs for the First Performance Period is 500. The Maximum Award of 750 MSUs for the first Performance Period (150% x 500) will vest.*

- Example of Company Performance at Target Performance:
  - For the First Performance Period, Company Performance is 15%, Benchmark Performance is 15%, and Target Performance is 15%.

- (Company Performance of 15% – Target Performance of 15%) = 0%
- 0% + 100% of Target Award = 100%
- 100% x Target Award = MSUs vested
- *If the Target Award of MSUs for the First Performance Period is 500, 500 MSUs (100% x 500) will vest for the first Performance Period.*

- Example of Company Performance missing the Target Performance:
  - For the First Performance Period, Company Performance is 10%, Benchmark Performance is 15%, and Target Performance is 15%.
  - (Company Performance of 10% – Target Performance of 15%) = -5%
  - (-5% x multiple of 3) + 100% of Target Award = 85%
  - 85% x Target Award = MSUs vested
  - *If the Target Award of MSUs for the First Performance Period is 500, 425 MSUs (85% x 500) will vest for the first Performance Period.*

If all the MSUs allocated to the First Performance Period do not vest during the First Performance Period, the unvested MSUs in the tranche covered by the First Performance Period shall be forfeited. Unvested MSUs from the First Performance Period may not be carried over to the Second Performance Period. The number of MSUs that vest pursuant to the above calculations shall be rounded to the nearest whole number of MSUs.

In the event of a Change in Control, each Performance Period shall be deemed to end upon the closing of the Change in Control (the "**Closing**"). The price of the Common Stock upon such Closing will be used for the measurement of Company Performance when calculating whether any MSUs will be eligible to vest. Once it has been determined that there will be MSUs that are eligible to vest, the number of MSUs that are eligible to vest for each Performance Period will be calculated. For each Performance Period, a prorated number (determined by multiplying (x) the number of number of MSUs eligible to vest by (y) the fraction obtained by dividing (A) the number of days elapsed from the beginning of the Performance Period to the date of the Closing by (B) the number of days in the originally scheduled Performance Period, and rounded to the nearest whole number of MSUs) of the MSUs that have become eligible to vest will vest immediately prior to and contingent upon the Change in Control. The remaining MSUs that are eligible to vest will vest in equal monthly installments over the period from the date of the Closing through the date the Performance Period was originally scheduled to end, subject to Participant's continued status as a Service Provider.

- Example of Change in Control calculation assuming an October 31, 2017 Change in Control closing date:
  - Company Performance is calculated to be 40% upon closing.
  - Benchmark Performance is calculated to be 15% upon closing.
  - Target Performance is 15% (or Benchmark Performance).
  - (Company Performance of 40% – Target Performance of 15%) = 25%
  - (25% x multiple of 2) + 100% of Target Award = 150%
  - 150% x Target Award for each Performance Period. If the Target Award of MSUs is 1000, 750 MSUs will be eligible to vest for each Performance Period.
  - *Half of the originally scheduled First Performance Period has elapsed, so half of the 750 MSUs eligible to vest for the First Performance Period (375 MSUs) will vest immediately upon the Closing. The remaining half (375 MSUs) will continue to vest monthly for the remainder of the originally scheduled First Performance Period, subject to Participant's continued status as a Service Provider.*
  - *One-third of the originally scheduled Second Performance Period has elapsed, so one-third of the 750 MSUs allocated to the Second Performance Period (250 MSUs) will vest immediately upon the Closing. The remaining two-thirds (500 MSUs) will continue to vest monthly for the remainder of the originally scheduled Second Performance Period, subject to Participant's continued status as a Service Provider.*

The above shall apply unless the Award is vested earlier in accordance with the terms of any change in control agreement, retention agreement, or employment agreement between Participant and the Company. For purposes of clarity, MSUs that are converted to time-based vesting as a result of a Change in Control shall be treated as Restricted Stock Units for all purposes of the Plan and any change in control agreement, retention agreement, or employment agreement between Participant and the Company.

In the event Participant ceases to be a Service Provider for any or no reason before Participant vests in the MSUs, the MSUs and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

If Participant does not wish to receive this Award and/or does not consent and agree to the terms and conditions on which the Award is offered, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A, then Participant must reject the Award by notifying the Company at Accuray Incorporated, Attention Stock Administration, 1310 Chesapeake Terrace, Sunnyvale, CA 94089 no later than **one (1) month following the Date of Grant**, in which case the Award will be cancelled. Participant's failure to notify the Company of his or her rejection of the Award within this specified period will constitute Participant's acceptance of the Award and his or her agreement with all terms and conditions of the Award, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Performance Unit Award, attached hereto as Exhibit A, all of which are made a part of this document.

Participant has reviewed the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel, and fully understands all provisions of the Plan and Award Agreement. By accepting this Award, Participant hereby agrees (i) to accept as binding, conclusive, and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and the Award Agreement, (ii) to notify the Company upon any change in the residence address indicated above, and (iii) to the extent required by Section 7 of Exhibit A, the sale of Shares to cover the Tax-Related Items (and any associated broker or other fees) and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express written consent.

ACCURAY INCORPORATED:

By: _____

Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF PERFORMANCE UNIT AWARD

1. Grant. The Company hereby grants to the individual named in the Notice of Grant (the "**Participant**") under the Plan an Award of MSUs, subject to all of the terms and conditions in this Award Agreement and the Plan, which is incorporated herein by reference. Subject to Section 21(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Award Agreement, the terms and conditions of the Plan will prevail.

2. Company's Obligation to Pay. Each MSU represents the right to receive a Share on the date it vests. Unless and until the MSUs will have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such MSUs. Prior to actual payment of any vested MSUs, such MSUs will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any MSUs that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant's death, to his or her estate) in whole Shares, subject to Participant satisfying any applicable tax withholding obligations as set forth in Section 7. Subject to the provisions of Section 4, such vested MSUs shall be paid in whole Shares as soon as practicable after vesting, but in each such case within the period sixty (60) days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any MSUs payable under this Award Agreement.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the MSUs awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant; provided, however, that (i) if a Vesting Date falls on a day upon which the U.S. national securities markets are not open for trading, such Vesting Date shall be delayed until the next trading day, and (ii) if a Vesting Date falls on December 31, such Vesting Date shall be delayed until the next trading day such that the Vesting Date, any sale to cover taxes, and applicable tax reporting all occur in the same calendar year. MSUs scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in accordance with any of the provisions of this Award Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested MSUs at any time, subject to the terms of the Plan. If so accelerated, such MSUs will be considered as having vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the MSUs is accelerated in connection with Participant's termination as a Service Provider (provided that such termination is a "separation from service" within the meaning of Section 409A, as determined by the Company), other than due to death**,** and if (x) Participant is a "specified employee" within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated MSUs will result in the imposition of additional tax under Section 409A if paid to Participant on or within the six (6) month period following Participant's termination as a Service Provider, then the payment of such accelerated MSUs will not be made until the date six (6) months and one (1) day following the date of Participant's termination as a Service Provider, unless Participant dies following his or her termination as a Service Provider, in which case, the MSUs will be paid in Shares to Participant's estate as soon as practicable following his or her death. It is the intent of this Award Agreement that it and all payments and benefits hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the MSUs provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Award Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). For purposes of this Award Agreement, "Section 409A" means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture upon Termination of Status as a Service Provider. Notwithstanding any contrary provision of this Award Agreement, the balance of the MSUs that have not vested as of the time of Participant's termination as a Service Provider for any or no reason and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to Participant's designated beneficiary, or if no beneficiary survives Participant, the administrator or executor of Participant's estate. Any such transferee must furnish the Company with (i) written notice of his or her status as transferee, and (ii) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Withholding of Taxes.

(a) Participant's Responsibility; Company's Obligation to Deliver Certificates. Participant acknowledges that, regardless of any action taken by the Company or, if different, Participant's employer (the "**Employer**"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant or deemed by the Company or the Employer in its discretion to be an appropriate charge to Participant even if legally applicable to the Company or the Employer ("**Tax-Related Items**"), is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer. Notwithstanding any contrary provision of this Award Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the Tax-Related Items. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting or settlement of the MSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalents; and (ii) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) Tax Withholding Arrangements. Prior to any relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, by Participant's acceptance of the Award, Participant authorizes and directs the Company and any brokerage firm determined acceptable to the Company to sell on Participant's behalf a whole number of shares from those Shares issued to Participant as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the obligation for Tax-Related Items. **By accepting this Award, Participant expressly consents to the sale of Shares to cover Tax-Related Items and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express consent.** In the event that such withholding by sale of Shares is problematic under applicable tax or securities law or has materially adverse accounting consequences, Participant authorizes the Company or its respective agents to satisfy the obligations with regard to all Tax-Related Items by (i) delivery of already vested and owned Shares having a fair market value equal to the amount required to be withheld, (ii) withholding otherwise deliverable Shares having a value equal to the amount required to be withheld, (iii) cash payment, (iv) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer, or (v) such other means as the Administrator deems appropriate.

Depending on the withholding method, the Company or the Employer may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates, in which case Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the Share equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of Shares subject to the vested MSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

8. Restrictions on Resale. Participant agrees not to sell any MSU Shares at a time when Applicable Laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as Participant's status as a Service Provider continues and for such period of time after the termination of Participant's status as a Service Provider as the Company may specify.

9. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

25. 10.No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE PERFORMANCE UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF PERFORMANCE UNITS OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Adjustments. In the event of a stock split, a stock dividend or a similar change in Company stock, the number of unvested MSUs awarded to Participant under this Award Agreement will be adjusted in accordance with the Plan.

12. Address for Notices. Any notice to be given to the Company under the terms of this Award Agreement will be addressed to the Company at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, Attn: Stock Administration, or at such other address as the Company may hereafter designate in writing.

13. Award is Not Transferable. Except to the limited extent provided in Section 6, this Award and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this Award and the rights and privileges conferred hereby immediately will become null and void. Participant may, however, dispose of this Award in Participant's will or through a beneficiary designation.

14. Binding Agreement. Subject to the limitation on the transferability of this Award contained herein, this Award Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

15. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

16. Plan Governs. This Award Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Award Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

17. Administrator Authority. The Administrator will have the power to interpret the Plan and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any MSUs have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

18. Electronic Delivery. Participant agrees that the Company may deliver by electronic means all documents relating to the Plan, the MSUs, or future performance units that may be awarded under the Plan (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or request Participant's consent to participate in the Plan by electronic means. Participant also agrees that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify Participant by electronic means.

19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

20. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

21. Modifications to the Award Agreement. This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of MSUs.

22. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Award of MSUs under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

23. Governing Law and Venue. This Award Agreement will be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Award of MSUs or this Award Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California**,** and agree that such litigation will be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Award of MSUs is made and/or to be performed.

24. Additional Terms for Non-U.S. Participants. Notwithstanding any provisions in this Award Agreement, for Participants outside the United States, this Award of MSUs shall be subject to the additional terms and conditions set forth in Exhibit B to this Award Agreement, including any additional terms and conditions for Participant's country. Moreover, if Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan. Exhibit B constitutes part of this Award Agreement.

25. Waiver. Participant acknowledges that a waiver by the Company of breach of any provision of this Award Agreement shall not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by me or any other Participant of the Plan.

EXHIBIT B

TERMS AND CONDITIONS FOR INTERNATIONAL AWARDS

This Exhibit B includes additional terms and conditions that govern the MSUs granted to Participant under the Plan. Further, this Exhibit B includes additional terms and conditions that govern the MSUs if Participant resides in one of the countries listed below.

NOTIFICATIONS

This Exhibit B also includes information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of June 2016. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the notification information may be out of date at the time the MSUs vest or Participant sells Shares acquired under the Plan.

In addition, the notification information contained herein is general in nature and may not apply to Participant's particular situation, and the Company is not in a position to assure Participant of a particular result. Accordingly, Participant should seek appropriate professional advice as to how the relevant laws in his or her country may apply to Participant's situation.

Finally, if Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers employment and/or residency to another country after the MSUs are granted to Participant, or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to Participant.

A. ADDITIONAL TERMS AND CONDITIONS

1. Nature of Award. In accepting this Award of MSUs, Participant acknowledges, understands and agrees to the following:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of this Award of MSUs is exceptional, voluntary and occasional and does not create any contractual or other right to receive future awards of MSUs, or benefits in lieu of MSUs, even if MSUs have been granted in the past;

(c) all decisions with respect to future MSU awards, if any, will be at the sole discretion of the Company;

(d) the MSU grant and Participant's participation in the Plan shall not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company and shall not interfere with the ability of the Employer to terminate Participant's employment or service relationship (if any) at any time;

(e) Participant is voluntarily participating in the Plan;

(f) the MSUs and the Shares subject to the MSUs are extraordinary items that are outside the scope of Participant's employment or service contract, if any;

(g) the MSUs and the Shares subject to the MSUs. and the income and value of the same, are not intended to replace any pension rights or compensation;

(h) the MSUs and the Shares subject to the MSUs are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(i) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages shall arise from forfeiture of the MSUs resulting from termination of Participant's employment or other service relationship by the Company or the Employer (for any reason whatsoever and whether or not later found to be invalid or in breach of any employment laws in the jurisdiction where Participant is employed or the terms of any employment or service agreement, if any), and in consideration of the grant of this Award of MSUs, Participant agrees not to institute any claim against the Company or the Employer or any of the other Affiliates of the Company;

(k) unless otherwise agreed with the Company, the MSUs and the Shares subject to the MSUs, and the income and value of the same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of an Affiliate of the Company;

(l) in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the MSUs under the Plan, if any, will terminate effective as of the date that Participant is no longer actively employed and will not be extended by any notice period mandated under local law (*e.g.*, active employment would not include a period of "garden leave" or similar period pursuant to local law); the Administrator shall have the exclusive discretion to determine when Participant is no longer actively employed for purposes of this Award of MSUs; and

(m) neither the Company, the Employer nor any other Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the MSUs or any amounts due to Participant pursuant to the settlement of the MSUs or the subsequent sale of any Shares acquired upon settlement.

2. No Advice Regarding Award. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant understands and agrees that Participant should consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

3. ***Data Privacy.*** ***Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Award Agreement and any other MSU grant materials by and among, as applicable, the Employer, the Company and its other Affiliates for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.***

Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all MSUs or any other entitlement to Shares awarded, canceled, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

Participant understands that Data will be transferred to a plan broker or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration, and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have different data privacy laws and protections than Participant's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local

human resources representative. Participant authorizes the Company, the broker, and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her employment status or service with the Employer will not be affected; the only consequence of refusing or withdrawing Participant's consent is that the Company would not be able to grant Participant MSUs or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

4. Language. If Participant has received this Award Agreement or any other document related to the Plan translated into a language other than English, and if the meaning of the translated version is different than the English version, the English version will control.

5. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the MSUs, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

6. Insider Trading Notification. Participant acknowledges that, depending on his or her country, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares or rights to shares (e.g., MSUs) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions, and Participant should speak to his or her personal advisor on this matter.

7. Foreign Asset/Account Reporting Notification. Participant understands that his or her country may have certain exchange control and/or foreign asset/account reporting requirements which may affect Participant's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends received or sale proceeds arising from the sale of Share) in a brokerage or bank account outside of Participant's country. Participant may be required to report such accounts, assets or transactions to the tax or other authorities in Participant's country. Participant acknowledges that it is his or her responsibility to comply with any applicable regulations, and Participant should speak to his or her personal advisor on this matter.

B. COUNTRY-SPECIFIC TERMS, CONDITIONS AND NOTIFICATIONS

BELGIUM

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Participant is required to report any securities (*e.g.*, Shares acquired under the Plan) held or bank accounts opened (including brokerage accounts) opened and maintained outside Belgium on his or her annual tax return. In a separate report, Participant will be required to provide the National Bank of Belgium with certain details regarding such foreign accounts (including the account number, bank name and country in which any such account was opened). This report, as well as information on how to complete it, can be found on the website of the National Bank of Belgium.

CANADA

TERMS AND CONDITIONS

Form of Settlement. If Participant is resident in Canada, MSUs will be settled in Shares only. In no event will any MSUs be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

Termination of Employment. This provision replaces Section A.1(l) of this Exhibit B:

For purposes of the MSUs, in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the MSUs under the Plan, if any, will terminate effective as of the date that is the earliest of (i) the date that Participant's employment with the Company, the Employer or any other Affiliate is terminated; (ii) the date Participant receives notice of termination of employment from the Company or the Employer (regardless of any notice period or period of pay in lieu of such notice required under Canadian employment law including, but not limited to, statutory law, regulatory law and/or common law); and (iii) the date Participant is no longer actively providing services to the Company or the Employer. The Administrator shall have the exclusive discretion to determine when Participant is no longer actively providing services to the Employer.

The following Terms and Conditions apply if Participant is a resident of Quebec:

Authorization to Release and Transfer Necessary Personal Information. This provision supplements Section A.3 of this Exhibit B:

Participant hereby authorizes the Company (including its Affiliates), the Employer and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company, any Affiliates, and any stock plan service provider that may be selected by the Company to assist with the Plan to disclose and discuss the Plan with their respective advisors. Participant further authorizes the Company, the Employer and any Affiliates to record such information and to keep such information in Participant's employee file.

French Language Provision. The parties acknowledge that it is their express wish that this Award Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les parties reconnaissent avoir exigé la redaction en anglais de cette convention ("**Award Agreement**"), *ainsi que de tous documents exécutés, avis donnés et procedures judiciaries intentées, directement ou indirectement, relativement à la présente convention.*

NOTIFICATIONS

Securities Law Information. Participant is permitted to sell Shares acquired under the Plan through the designated broker appointed under the Plan, if any, provided that the resale of such shares takes place outside of Canada through the facilities of a stock exchange on which the shares are listed (*i.e.*, the NASDAQ Global Select Market).

Foreign Asset/Account Reporting Information. Foreign property, including Shares and MSUs, held by a Canadian resident must generally be reported annually on a Form T1135 (Foreign Income Verification Statement) if the total cost of Participant's foreign property exceeds C$100,000 at any time during the year. Thus MSUs must be reported – generally at a nil cost - if the C$100,000 cost threshold is exceeded because other foreign property is held by the employee. When shares are acquired, their cost generally is the adjusted cost base ("**ACB**") of the shares. The ACB would ordinarily equal the fair market value of the shares at the time of acquisition, but if the employee owns other shares of the same company, this ACB may have to be averaged with the ACB of the other shares.

FRANCE

TERMS AND CONDITIONS

Tax Considerations. The MSUs granted under the Award Agreement are not intended to be French tax-qualified restricted stock units granted under Sections L. 225-197-1 to L. 225-197-6 of the French Commercial Code, as amended.

Consent to Receive Information in English. By accepting the MSUs, Participant confirms having read and understood the Plan and the Award Agreement, which were provided in the English language. Participant accepts the terms of those documents accordingly.

En acceptant cette attribution gratuite d'actions, le Participant confirme avoir lu et comprenez le Plan et ce Contrat, incluant tous leurs termes et conditions, qui ont été transmis en langue anglaise. Le Participant accepte les dispositions de ces documents en connaissance de cause.

NOTIFICATIONS

Exchange Control Information. French residents with foreign account balances exceeding €1,000,000 must report any transactions carried out on those accounts to the Bank of France on a monthly basis. French residents also must report all foreign bank and brokerage accounts on an annual basis (including accounts opened or closed during the tax year) on a specific form together with the income tax return. Failure to comply could trigger significant penalties.

GERMANY

NOTIFICATIONS

Exchange Control Information. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments in connection with securities (including proceeds realized upon the sale of Shares or the receipt of dividends), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically and the form of report ("***Allgemeine Meldeportal Statistik***") can be accessed via the Bundesbank's website (www.bundesbank.de), in both German and English. Participant is responsible for complying with the reporting requirements.

GREECE

There are no country-specific provisions.

HONG KONG

TERMS AND CONDITIONS

Sale of Shares. Shares received at vesting are accepted as a personal investment. In the event the MSUs vest within six months of the Date of Grant, Participant agrees that he or she will not offer to the public or otherwise dispose of the shares prior to the six-month anniversary of the Date of Grant.

Form of Settlement. The Award of MSUs will be settled in Shares only. In no event will any MSUs be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

NOTIFICATIONS

Securities Law Information: *Warning. The contents of the Award Agreement, including this Exhibit B, have not been reviewed by any regulatory authority in Hong Kong. Participant should exercise caution in relation to the offer. If Participant is in any doubt about any of the contents of the Award Agreement, including this Exhibit B, or the Plan, Participant should obtain independent professional advice. The MSUs and any Shares issued at vesting of the MSUs do not constitute a public offering of securities under Hong Kong law and are available only to employees of the Company or an Affiliate of the Company. The Award Agreement, including this Exhibit B, the Plan, the Notice of*

Grant, and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a "prospectus" for a public offering of securities under the applicable securities legislation in Hong Kong. The MSUs and any related documentation are intended only for the personal use of Participant and may not be distributed to any other person.

ITALY

TERMS AND CONDITIONS

Data Privacy Notice and Consent. This provision replaces in its entirety Section A.3 of this Exhibit B:

Participant understands that the Employer, the Company and any Affiliate of the Company may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any Affiliate of the Company, details of all MSUs or other entitlement to Shares granted, awarded, canceled, vested, unvested or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, managing and administering the Plan.

Participant also understands that providing the Employer with Data is necessary for the performance of the Plan and that Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect Participant's ability to participate in the Plan. The Controller of personal data processing is Accuray Incorporated, with registered offices at 1310 Chesapeake Terrace, Sunnyvale, California 94089, United States of America, and, pursuant to Legislative Decree no. 196/2003, its representative in Italy.

Participant understands that Data will not be publicized, but it may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. Participant understands that Data may also be transferred to the Company's stock plan service provider or such other administrator that may be engaged by the Company in the future. Participant further understands that the Company and/or any Affiliate of the Company will transfer Data among themselves as necessary for the purpose of implementing, administering and managing Participant's participation in the Plan, and that the Company and/or any Affiliate of the Company may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom Participant may elect to deposit any Shares acquired at vesting of the MSUs. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing Participant's participation in the Plan. Participant understands that these recipients may be located in or outside the European Economic Area, such as in the United States or elsewhere. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

Participant understands that Data-processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require Participant's consent thereto, as the processing is necessary to performance of contractual obligations related to implementation, administration, and management of the Plan. Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, Participant has the right to, including but not limited to, access, delete, update, correct, or terminate, for legitimate reason, the Data processing.

Furthermore, Participant is aware that Data will not be used for direct marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting Participant's local human resources representative.

Plan Document Acknowledgment. In accepting the grant of the MSUs, Participant acknowledges that he or she has received a copy of the Plan and the Award Agreement and has reviewed the Plan and the Award Agreement, including this Exhibit B, in their entirety and fully understands and accepts all provisions of the Plan and the Award Agreement, including this Exhibit B.

Participant acknowledges that he or she has read and specifically and expressly approves the following sections of the Award Agreement: Section 3 on Vesting and Termination; Section 7 on Tax Withholding; Section 23 on Governing Law and Venue; Section A.1 of this Exhibit B on Nature of Award; Section A.4 of this Exhibit B on Language; and the Data Privacy Notice and Consent section included in this Exhibit B.

NOTIFICATIONS

Exchange Control Information. Italian residents who, at any time during the fiscal year, hold foreign financial assets (*e.g.*, cash, Shares, etc.) which may generate income taxable in Italy are required to report such investments or assets on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad.

JAPAN

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Japanese residents are required to report details of any assets held outside Japan as of December 31, including Shares acquired under the Plan, to the extent such assets have a total net fair market value exceeding ¥50,000,000. Such report will be due by March 15 each year. Participant is responsible for complying with this reporting obligation if applicable and Participant should consult his or her personal tax advisor in this regard.

NETHERLANDS

There are no country-specific provisions.

SINGAPORE

NOTIFICATIONS

Restriction on Sale of Shares. To the extent Participant sells, offers to sell or otherwise disposes of Shares acquired under the Plan within six months of the date of grant, Participant is permitted to dispose of such shares through any designated broker appointed under the Plan, provided the resale of Shares acquired under the Plan takes place outside Singapore through the facilities of a stock exchange on which the Shares are listed. The Company's shares are currently listed on the NASDAQ Global Select Market.

Securities Law Information. The Award of MSUs is being made to Participant in reliance on the "Qualifying Person" exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) ("**SFA**"). The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Participant should note that the Award of MSUs is subject to section 257 of the SFA, and Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the MSUs, unless such sale or offer in Singapore is made (i) after six months from the Date of Grant or (ii) pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA.

Chief Executive Officer and Director Notification Obligation. If Participant is the Chief Executive Officer, or a director, associate director, or shadow director of the Company's Singapore Affiliate, Participant is subject to certain

notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Company's Singapore Affiliate in writing when Participant receives an interest (*e.g.*, MSUs or Shares) in the Company or any Affiliate of the Company. In addition, Participant must notify the Company's Singapore Affiliate when he or she sells Shares of the Company or any Affiliate of the Company (including when Participant sells Shares issued upon vesting of the MSUs). These notifications must be made within two days of acquiring or disposing of any interest in the Company or any Affiliate of the Company. In addition, a notification of Participant's interests in the Company or any Affiliate of the Company must be made within two days of becoming the Chief Executive Officer or a director.

SWITZERLAND

NOTIFICATIONS

Securities Law Information. The Award of MSUs is not intended to be a public offering in or from Switzerland. Neither this document nor any other materials relating to the offer constitutes a prospectus as such term is understood pursuant to article 652a of the Swiss Code of Obligations, and neither this document nor any other materials relating to the grant may be publicly distributed or otherwise made publicly available in Switzerland. Neither this document nor any other offering or marketing material relating to the Plan has been or will be filed with, approved or supervised by any Swiss regulatory authority (in particular, the Swiss financial Market Supervisory Authority).

UNITED ARAB EMIRATES

NOTIFICATIONS

Securities Law Information. Participation in the Plan is being offered only to Employees and Consultants of the Company and its Affiliates, and is in the nature of providing equity incentives to those providing services in the United Arab Emirates. The Plan and the Award Agreement are intended for distribution only to such Participants and must not be delivered to, or relied on by, any other person. Participant should conduct Participant's own due diligence on the securities. If Participant does not understand the contents of the Plan or the Award Agreement, Participant should consult an authorized financial adviser. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan, and neither the Ministry of Economy nor the Dubai Department of Economic Development has approved the Plan or the Award Agreement, nor taken any steps to verify the information set out therein and has any responsibility for such documents.

UNITED KINGDOM

TERMS AND CONDITIONS

Tax Withholding. This provision supplements Section 7 of the Award Agreement:

If payment or withholding of the Tax-Related Items is not made within ninety (90) days of the end of the U.K. tax year in which the event giving rise to the liability for income tax (the "**Due Date**") occurs, or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected income tax may constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("**HMRC**"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 7 of the Award Agreement.

Notwithstanding the foregoing, Participant understands and agrees that if he or she is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the income tax liability. In the event that Participant is a director or executive officer and income tax is not collected from or paid by Participant by the Due Date, Participant understands that the amount of any uncollected Tax-Related Items may constitute a benefit to Participant on which additional income tax and national insurance contributions ("**NICs**") may be payable. Participant understands and agrees that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Employer (as appropriate) for the value of any employee NICs due on this additional benefit which the Company or the Employer may recover from Participant by any of the means referred to in Section 7 of the Award Agreement.

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AGREEMENT

Participant must notify the Company by the fifteenth (15th) day of the month following the Date of Grant if he or she wishes to reject this Award. Otherwise, Participant will be deemed to have accepted the Award on the terms and conditions on which it is offered.

Unless otherwise defined herein, the terms defined in the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan (the "Plan") will have the same defined meanings in this Restricted Stock Unit Agreement (the "Award Agreement"), which includes the Notice of Grant of Restricted Stock Unit Award (the "Notice of Grant") and Terms and Conditions of Restricted Stock Unit Award, attached hereto as Exhibit A.

NOTICE OF GRANT OF RESTRICTED STOCK UNIT AWARD

Participant Name:

Address:

Participant has been granted the right to receive an Award of Restricted Stock Units, subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Grant Number _____

Date of Grant _____

Vesting Commencement Date _____

Number of Restricted Stock Units _____

Vesting Schedule:

Subject to Section 3 of Exhibit A and any acceleration provisions contained in the Plan or set forth below, the Restricted Stock Units will vest in accordance with the following schedule:

[Insert vesting schedule]

In the event Participant ceases to be a Service Provider for any or no reason before Participant vests in the Restricted Stock Units, the Restricted Stock Units and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

If Participant does not wish to receive this Award and/or does not consent and agree to the terms and conditions on which the Award is offered, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Restricted Stock Unit Award, attached hereto as Exhibit A, then Participant must reject the Award by notifying the Company at Accuray Incorporated, Attention Stock Administration, 1310 Chesapeake Terrace, Sunnyvale, CA 94089 no later than **the fifteenth (15th) day of the month following the Date of Grant**, in which case the Award will be cancelled. Participant's failure to notify the Company of his or her rejection of the Award within this specified period will constitute Participant's acceptance of the Award and his or her agreement with all terms and conditions of the Award, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of Restricted Stock Unit Award, attached hereto as Exhibit A, all of which are made a part of this document.

Participant has reviewed the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel, and fully understands all provisions of the Plan and Award Agreement. By accepting this Award, Participant hereby agrees (i) to accept as binding, conclusive, and final all decisions or interpretations of

the Administrator upon any questions relating to the Plan and the Award Agreement, (ii) to notify the Company upon any change in the residence address indicated above, and (iii) to the extent required by Section 7 of Exhibit A, the sale of Shares to cover the Tax-Related Items (and any associated broker or other fees) and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express written consent.

ACCURAY INCORPORATED:

By: _____

Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD

1. Grant. The Company hereby grants to the individual named in the Notice of Grant (the "Participant") under the Plan an Award of Restricted Stock Units, subject to all of the terms and conditions in this Award Agreement and the Plan, which is incorporated herein by reference. Subject to Section 21(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Award Agreement, the terms and conditions of the Plan will prevail.

2. Company's Obligation to Pay. Each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Restricted Stock Units will have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, such Restricted Stock Units will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant's death, to his or her estate) in whole Shares, subject to Participant satisfying any applicable tax withholding obligations as set forth in Section 7. Subject to the provisions of Section 4, such vested Restricted Stock Units shall be paid in whole Shares as soon as practicable after vesting, but in each such case within the period sixty (60) days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any Restricted Stock Units payable under this Award Agreement.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the Restricted Stock Units awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant; provided, however, that (i) if a Vesting Date falls on a day upon which the U.S. national securities markets are not open for trading, such Vesting Date shall be delayed until the next trading day, and (ii) if a Vesting Date falls on December 31, such Vesting Date shall be delayed until the next trading day such that the Vesting Date, any sale to cover taxes, and applicable tax reporting all occur in the same calendar year. Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in accordance with any of the provisions of this Award Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested Restricted Stock Units at any time, subject to the terms of the Plan. If so accelerated, such Restricted Stock Units will be considered as having vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units is accelerated in connection with Participant's termination as a Service Provider (provided that such termination is a "separation from service" within the meaning of Section 409A, as determined by the Company), other than due to death**,** and if (x) Participant is a "specified employee" within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated Restricted Stock Units will result in the imposition of additional tax under Section 409A if paid to Participant on or within the six (6) month period following Participant's termination as a Service Provider, then the payment of such accelerated Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Participant's termination as a Service Provider, unless Participant dies following his or her termination as a Service Provider, in which case, the Restricted Stock Units will be paid in Shares to Participant's estate as soon as practicable following his or her death. It is the intent of this Award Agreement that it and all payments and benefits hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the Restricted Stock Units provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Award Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). For purposes of this Award Agreement, "Section 409A"

means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture upon Termination of Status as a Service Provider. Notwithstanding any contrary provision of this Award Agreement, the balance of the Restricted Stock Units that have not vested as of the time of Participant's termination as a Service Provider for any or no reason and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Award Agreement will, if Participant is then deceased, be made to Participant's designated beneficiary, or if no beneficiary survives Participant, the administrator or executor of Participant's estate. Any such transferee must furnish the Company with (i) written notice of his or her status as transferee, and (ii) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Withholding of Taxes.

(a) Participant's Responsibility; Company's Obligation to Deliver Certificates. Participant acknowledges that, regardless of any action taken by the Company or, if different, Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant or deemed by the Company or the Employer in its discretion to be an appropriate charge to Participant even if legally applicable to the Company or the Employer ("Tax-Related Items"), is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer. Notwithstanding any contrary provision of this Award Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the Tax-Related Items. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalents; and (ii) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) Tax Withholding Arrangements. Prior to any relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, by Participant's acceptance of the Award, Participant authorizes and directs the Company and any brokerage firm determined acceptable to the Company to sell on Participant's behalf a whole number of shares from those Shares issued to Participant as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the obligation for Tax-Related Items. **By accepting this Award, Participant expressly consents to the sale of Shares to cover Tax-Related Items and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express consent.** In the event that such withholding by sale of Shares is problematic under applicable tax or securities law or has materially adverse accounting consequences, Participant authorizes the Company or its respective agents to satisfy the obligations with regard to all Tax-Related Items by (i) delivery of already vested and owned Shares having a fair market value equal to the amount required to be withheld, (ii) withholding otherwise deliverable Shares having a value equal to the amount required to be withheld, (iii) cash payment, (iv) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer, or (v) such other means as the Administrator deems appropriate.

Depending on the withholding method, the Company or the Employer may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates, in which case Participant will receive a refund of any over-withheld

amount in cash and will have no entitlement to the Share equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

8. Restrictions on Resale. Participant agrees not to sell any Restricted Stock Unit Shares at a time when Applicable Laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as Participant's status as a Service Provider continues and for such period of time after the termination of Participant's status as a Service Provider as the Company may specify.

9. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF RESTRICTED STOCK UNITS OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Adjustments. In the event of a stock split, a stock dividend or a similar change in Company stock, the number of unvested Restricted Stock Units awarded to Participant under this Award Agreement will be adjusted in accordance with the Plan.

12. Address for Notices. Any notice to be given to the Company under the terms of this Award Agreement will be addressed to the Company at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, Attn: Stock Administration, or at such other address as the Company may hereafter designate in writing.

13. Award is Not Transferable. Except to the limited extent provided in Section 6, this Award and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this Award and the rights and privileges conferred hereby immediately will become null and void. Participant may, however, dispose of this Award in Participant's will or through a beneficiary designation.

14. Binding Agreement. Subject to the limitation on the transferability of this Award contained herein, this Award Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

15. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

16. Plan Governs. This Award Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Award Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

17. Administrator Authority. The Administrator will have the power to interpret the Plan and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Restricted Stock Units have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

18. Electronic Delivery. Participant agrees that the Company may deliver by electronic means all documents relating to the Plan, the Restricted Stock Units, or future restricted stock units that may be awarded under the Plan (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or request Participant's consent to participate in the Plan by electronic means. Participant also agrees that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify Participant by electronic means.

19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

20. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

21. Modifications to the Award Agreement. This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Restricted Stock Units.

22. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Award of Restricted Stock Units under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

23. Governing Law and Venue. This Award Agreement will be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Award of Restricted Stock Units or this Award Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California**,** and agree that such litigation will be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Award of Restricted Stock Units is made and/or to be performed.

24. Additional Terms for Non-U.S. Participants. Notwithstanding any provisions in this Award Agreement, for Participants outside the United States, this Award of Restricted Stock Units shall be subject to the additional terms and conditions set forth in Exhibit B to this Award Agreement, including any additional terms and conditions for Participant's country. Moreover, if Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan. Exhibit B constitutes part of this Award Agreement.

25. Waiver. Participant acknowledges that a waiver by the Company of breach of any provision of this Award Agreement shall not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by me or any other Participant of the Plan.

EXHIBIT B

TERMS AND CONDITIONS FOR INTERNATIONAL AWARDS

This Exhibit B includes additional terms and conditions that govern the Restricted Stock Units granted to Participant under the Plan. Further, this Exhibit B includes additional terms and conditions that govern the Restricted Stock Units if Participant resides in one of the countries listed below.

NOTIFICATIONS

This Exhibit B also includes information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of June 2016. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the notification information may be out of date at the time the Restricted Stock Units vest or Participant sells Shares acquired under the Plan.

In addition, the notification information contained herein is general in nature and may not apply to Participant's particular situation, and the Company is not in a position to assure Participant of a particular result. Accordingly, Participant should seek appropriate professional advice as to how the relevant laws in his or her country may apply to Participant's situation.

Finally, if Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers employment and/or residency to another country after the Restricted Stock Units are granted to Participant, or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to Participant.

A. ADDITIONAL TERMS AND CONDITIONS

1. Nature of Award. In accepting this Award of Restricted Stock Units, Participant acknowledges, understands and agrees to the following:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of this Award of Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future awards of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;

(c) all decisions with respect to future Restricted Stock Unit awards, if any, will be at the sole discretion of the Company;

(d) the Restricted Stock Unit grant and Participant's participation in the Plan shall not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company and shall not interfere with the ability of the Employer to terminate Participant's employment or service relationship (if any) at any time;

(e) Participant is voluntarily participating in the Plan;

(f) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are extraordinary items that are outside the scope of Participant's employment or service contract, if any;

(g) the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not intended to replace any pension rights or compensation;

(h) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(i) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from termination of Participant's employment or other service relationship by the Company or the Employer (for any reason whatsoever and whether or not later found to be invalid or in breach of any employment laws in the jurisdiction where Participant is employed or the terms of any employment or service agreement, if any), and in consideration of the grant of this Award of Restricted Stock Units, Participant agrees not to institute any claim against the Company or the Employer or any of the other Affiliates of the Company;

(k) unless otherwise agreed with the Company, the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of an Affiliate of the Company;

(l) in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that Participant is no longer actively employed and will not be extended by any notice period mandated under local law (*e.g.*, active employment would not include a period of "garden leave" or similar period pursuant to local law); the Administrator shall have the exclusive discretion to determine when Participant is no longer actively employed for purposes of this Award of Restricted Stock Units; and

(m) neither the Company, the Employer nor any other Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or any amounts due to Participant pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any Shares acquired upon settlement.

2. No Advice Regarding Award. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant understands and agrees that Participant should to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

3. Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Award Agreement and any other Restricted Stock Unit grant materials by and among, as applicable, the Employer, the Company and its other Affiliates for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.

Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

Participant understands that Data will be transferred to a plan broker or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration, and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have

different data privacy laws and protections than Participant's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company, the broker, and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her employment status or service with the Employer will not be affected; the only consequence of refusing or withdrawing Participant's consent is that the Company would not be able to grant Participant Restricted Stock Units or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

4. Language. If Participant has received this Award Agreement or any other document related to the Plan translated into a language other than English, and if the meaning of the translated version is different than the English version, the English version will control.

5. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the Restricted Stock Units, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

6. Insider Trading Notification. Participant acknowledges that, depending on his or her country, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares or rights to shares (*e.g.*, Restricted Stock Units) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions, and Participant should speak to his or her personal advisor on this matter.

7. Foreign Asset/Account Reporting Notification. Participant understands that his or her country may have certain exchange control and/or foreign asset/account reporting requirements which may affect Participant's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends received or sale proceeds arising from the sale of Share) in a brokerage or bank account outside of Participant's country. Participant may be required to report such accounts, assets or transactions to the tax or other authorities in Participant's country. Participant acknowledges that it is his or her responsibility to comply with any applicable regulations, and Participant should speak to his or her personal advisor on this matter.

B. COUNTRY-SPECIFIC TERMS, CONDITIONS AND NOTIFICATIONS

BELGIUM

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Participant is required to report any securities (*e.g.*, Shares acquired under the Plan) held or bank accounts opened (including brokerage accounts) opened and maintained outside Belgium on his or her annual tax return. In a separate report, Participant will be required to provide the National Bank of Belgium with certain details regarding such foreign accounts (including the account number, bank name and country

in which any such account was opened). This report, as well as information on how to complete it, can be found on the website of the National Bank of Belgium.

CANADA

TERMS AND CONDITIONS

Form of Settlement. If Participant is resident in Canada, Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

Termination of Employment. This provision replaces Section A.1(l) of this Exhibit B:

For purposes of the Restricted Stock Units, in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that is the earliest of (i) the date that Participant's employment with the Company, the Employer or any other Affiliate is terminated; (ii) the date Participant receives notice of termination of employment from the Company or the Employer (regardless of any notice period or period of pay in lieu of such notice required under Canadian employment law including, but not limited to, statutory law, regulatory law and/or common law); and (iii) the date Participant is no longer actively providing services to the Company or the Employer. The Administrator shall have the exclusive discretion to determine when Participant is no longer actively providing services to the Employer.

The following Terms and Conditions apply if Participant is a resident of Quebec:

Authorization to Release and Transfer Necessary Personal Information. This provision supplements Section A.3 of this Exhibit B:

Participant hereby authorizes the Company (including its Affiliates), the Employer and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company, any Affiliates, and any stock plan service provider that may be selected by the Company to assist with the Plan to disclose and discuss the Plan with their respective advisors. Participant further authorizes the Company, the Employer and any Affiliates to record such information and to keep such information in Participant's employee file.

French Language Provision. The parties acknowledge that it is their express wish that this Award Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les parties reconnaissent avoir exigé la redaction en anglais de cette convention ("Award Agreement"), *ainsi que de tous documents exécutés, avis donnés et procedures judiciaries intentées, directement ou indirectement, relativement à la présente convention.*

NOTIFICATIONS

Securities Law Information. Participant is permitted to sell Shares acquired under the Plan through the designated broker appointed under the Plan, if any, provided that the resale of such shares takes place outside of Canada through the facilities of a stock exchange on which the Shares are listed (*i.e.*, the NASDAQ Global Select Market)

Foreign Asset/Account Reporting Information. Foreign property, including Shares and Restricted Stock Units, held by a Canadian resident must generally be reported annually on a Form T1135 (Foreign Income Verification Statement) if the total cost of Participant's foreign property exceeds C$100,000 at any time during the year. Thus Restricted Stock Units must be reported – generally at a nil cost - if the C$100,000 cost threshold is exceeded because other foreign property is held by the employee. When shares are acquired, their cost generally is the adjusted cost base ("ACB") of the shares. The ACB would ordinarily equal the fair market value of the shares at the time of acquisition,

but if the employee owns other shares of the same company, this ACB may have to be averaged with the ACB of the other shares.

GERMANY

NOTIFICATIONS

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments in connection with securities (including proceeds realized upon the sale of Shares or the receipt of dividends), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically and the form of report ("*Allgemeine Meldeportal Statistik*") can be accessed via the Bundesbank's website (www.bundesbank.de), in both German and English. Participant is responsible for complying with the reporting requirements.

GREECE

There are no country-specific provisions.

HONG KONG

TERMS AND CONDITIONS

Sale of Shares. Shares received at vesting are accepted as a personal investment. In the event the Restricted Stock Units vest within six months of the Date of Grant, Participant agrees that he or she will not offer to the public or otherwise dispose of the shares prior to the six-month anniversary of the Date of Grant.

Form of Settlement. The Award of Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

NOTIFICATIONS

Securities Law Information: *Warning. The contents of the Award Agreement, including this Exhibit B, have not been reviewed by any regulatory authority in Hong Kong. Participant should exercise caution in relation to the offer. If Participant is in any doubt about any of the contents of the Award Agreement, including this Exhibit B, or the Plan, Participant should obtain independent professional advice. The Restricted Stock Units and any Shares issued at vesting of the Restricted Stock Units do not constitute a public offering of securities under Hong Kong law and are available only to employees of the Company or an Affiliate of the Company. The Award Agreement, including this Exhibit B, the Plan, the Notice of Grant, and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a "prospectus" for a public offering of securities under the applicable securities legislation in Hong Kong. The Restricted Stock Units and any related documentation are intended only for the personal use of Participant and may not be distributed to any other person.*

ITALY

TERMS AND CONDITIONS

Data Privacy Notice and Consent. This provision replaces in its entirety Section A.3 of this Exhibit B:

Participant understands that the Employer, the Company and any Affiliate of the Company may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any Affiliate of the Company, details of all Restricted Stock Units

or other entitlement to Shares granted, awarded, canceled, vested, unvested or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, managing and administering the Plan.

Participant also understands that providing the Employer with Data is necessary for the performance of the Plan and that Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect Participant's ability to participate in the Plan. The Controller of personal data processing is Accuray Incorporated, with registered offices at 1310 Chesapeake Terrace, Sunnyvale, California 94089, United States of America, and, pursuant to Legislative Decree no. 196/2003, its representative in Italy.

Participant understands that Data will not be publicized, but it may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. Participant understands that Data may also be transferred to the Company's stock plan service provider or such other administrator that may be engaged by the Company in the future. Participant further understands that the Company and/or any Affiliate of the Company will transfer Data among themselves as necessary for the purpose of implementing, administering and managing Participant's participation in the Plan, and that the Company and/or any Affiliate of the Company may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom Participant may elect to deposit any Shares acquired at vesting of the Restricted Stock Units. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing Participant's participation in the Plan. Participant understands that these recipients may be located in or outside the European Economic Area, such as in the United States or elsewhere. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

Participant understands that Data-processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require Participant's consent thereto, as the processing is necessary to performance of contractual obligations related to implementation, administration, and management of the Plan. Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, Participant has the right to, including but not limited to, access, delete, update, correct, or terminate, for legitimate reason, the Data processing.

Furthermore, Participant is aware that Data will not be used for direct marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting Participant's local human resources representative.

Plan Document Acknowledgment. In accepting the grant of the Restricted Stock Units, Participant acknowledges that he or she has received a copy of the Plan and the Award Agreement and has reviewed the Plan and the Award Agreement, including this Exhibit B, in their entirety and fully understands and accepts all provisions of the Plan and the Award Agreement, including this Exhibit B.

Participant acknowledges that he or she has read and specifically and expressly approves the following sections of the Award Agreement: Section 3 on Vesting and Termination; Section 7 on Tax Withholding; Section 23 on Governing Law and Venue; Section A.1 of this Exhibit B on Nature of Award; Section A.4 of this Exhibit B on Language; and the Data Privacy Notice and Consent section included in this Exhibit B.

NOTIFICATIONS

Exchange Control Information. Italian residents who, at any time during the fiscal year, hold foreign financial assets (*e.g.*, cash, Shares, etc.) which may generate income taxable in Italy are required to report such investments or assets

on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad.

JAPAN

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Japanese residents are required to report details of any assets held outside Japan as of December 31, including Shares acquired under the Plan, to the extent such assets have a total net fair market value exceeding ¥50,000,000. Such report will be due by March 15 each year. Participant is responsible for complying with this reporting obligation if applicable and Participant should consult his or her personal tax advisor in this regard.

NETHERLANDS

There are no country-specific provisions.

SINGAPORE

NOTIFICATIONS

Restriction on Sale of Shares. To the extent Participant sells, offers to sell or otherwise disposes of Shares acquired under the Plan within six months of the date of grant, Participant is permitted to dispose of such shares through any designated broker appointed under the Plan, provided the resale of Shares acquired under the Plan takes place outside Singapore through the facilities of a stock exchange on which the Shares are listed. The Company's shares are currently listed on the NASDAQ Global Select Market.

Securities Law Information. The Award of Restricted Stock Units is being made to Participant in reliance on the "Qualifying Person" exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA"). The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Participant should note that the Award of Restricted Stock Units is subject to section 257 of the SFA, and Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the Restricted Stock Units, unless such sale or offer in Singapore is made (i) after six months from the Date of Grant or (ii) pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA.

Chief Executive Officer and Director Notification Obligation. If Participant is the Chief Executive Officer, or a director, associate director, or shadow director of the Company's Singapore Affiliate, Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Company's Singapore Affiliate in writing when Participant receives an interest (*e.g.*, Restricted Stock Units or Shares) in the Company or any Affiliate of the Company. In addition, Participant must notify the Company's Singapore Affiliate when he or she sells Shares the Company or of any Affiliate of the Company (including when Participant sells Shares issued upon vesting of the Restricted Stock Units). These notifications must be made within two days of acquiring or disposing of any interest in the Company or any Affiliate of the Company. In addition, a notification of Participant's interests in the Company or any Affiliate of the Company must be made within two days of becoming the Chief Executive Officer or a director.

SWITZERLAND

NOTIFICATIONS

Securities Law Information. The Award of Restricted Stock Units is not intended to be a public offering in or from Switzerland. Neither this document nor any other materials relating to the offer constitutes a prospectus as such term is understood pursuant to article 652a of the Swiss Code of Obligations, and their this document nor any other materials relating to the grant may be publicly distributed or otherwise made publicly available in Switzerland. Neither this

document nor any other offering or marketing material relating to the Plan has been or will be filed with, approved or supervised by any Swiss regulatory authority (in particular, the Swiss financial Market Supervisory Authority).

UNITED ARAB EMIRATES

NOTIFICATIONS

Securities Law Information. Participation in the Plan is being offered only to Employees and Consultants of the Company and its Affiliates, and is in the nature of providing equity incentives to those providing services in the United Arab Emirates. The Plan and the Award Agreement are intended for distribution only to such Participants and must not be delivered to, or relied on by, any other person. Participant should conduct Participant's own due diligence on the securities. If Participant does not understand the contents of the Plan or the Award Agreement, Participant should consult an authorized financial adviser. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan, and neither the Ministry of Economy nor the Dubai Department of Economic Development has approved the Plan or the Award Agreement, nor taken any steps to verify the information set out therein and has any responsibility for such documents.

UNITED KINGDOM

TERMS AND CONDITIONS

Tax Withholding. This provision supplements Section 7 of the Award Agreement:

If payment or withholding of the Tax-Related Items is not made within ninety (90) days of the end of the U.K. tax year in which the event giving rise to the liability for income tax (the "Due Date") occurs, or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected income tax may constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("HMRC"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 7 of the Award Agreement.

Notwithstanding the foregoing, Participant understands and agrees that if he or she is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the income tax liability. In the event that Participant is a director or executive officer and income tax is not collected from or paid by Participant by the Due Date, Participant understands that the amount of any uncollected Tax-Related Items may constitute a benefit to Participant on which additional income tax and national insurance contributions ("NICs") may be payable. Participant understands and agrees that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Employer (as appropriate) for the value of any employee NICs due on this additional benefit which the Company or the Employer may recover from Participant by any of the means referred to in Section 7 of the Award Agreement.

ACCURAY INCORPORATED

AMENDED AND RESTATED 2016 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AGREEMENT FOR FRENCH PARTICIPANTS

Participant must notify the Company by the fifteenth (15th) day of the month following the Date of Grant if he or she wishes to reject this Award. Otherwise, Participant will be deemed to have accepted the Award on the terms and conditions on which it is offered.

Unless otherwise defined herein, the terms defined in the Accuray Incorporated Amended and Restated 2016 Equity Incentive Plan (the "U.S. Plan") and the Accuray Incorporated 2016 Equity Incentive Plan Rules for Grant of Restricted Stock Units to Eligible Employees in France (the "French Plan" and together with the U.S. Plan, the "Plan") will have the same defined meanings in this Restricted Stock Unit Agreement for French Participants (the "Award Agreement"), which includes the Notice of Grant of Restricted Stock Unit Award (the "Notice of Grant") and Terms and Conditions of Restricted Stock Unit Award, attached hereto as Exhibit A.

NOTICE OF GRANT OF RESTRICTED STOCK UNIT AWARD

Participant Name:

Address:

Participant has been granted the right to receive an Award of Restricted Stock Units, subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Grant Number _____

Date of Grant _____

Vesting Commencement Date _____

Number of Restricted Stock Units _____

Vesting Schedule:

Subject to Section 3 of Exhibit A and any acceleration provisions contained in the Plan or set forth below, the Restricted Stock Units will vest in accordance with the following schedule:

[Insert vesting schedule]

With respect to Restricted Stock Units granted to Participants in France which are intended to be French-qualified Restricted Stock Units, as set forth in the French Plan, in no case shall the Vesting Date occur prior to the expiration of a one-year period as calculated from the Date of Grant, or such other period as is required to comply with the minimum vesting period applicable to French-qualified Restricted Stock Units under Section L. 225-197-1 of the French Commercial Code, as amended, the relevant Sections of the French Tax Code or of the French Social Security Code, as amended, except in the case of death of the Participant.

In the event Participant ceases to be a Service Provider for any or no reason before Participant vests in the Restricted Stock Units, the Restricted Stock Units and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated, except in the case of death of the Participant as detailed in Section 6 of Exhibit A.

If Participant does not wish to receive this Award and/or does not consent and agree to the terms and conditions on which the Award is offered, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of French-qualified Restricted Stock Unit Award, attached hereto as Exhibit A, then Participant must reject the Award by notifying the Company at Accuray Incorporated, Attention Stock Administration, 1310 Chesapeake

Terrace, Sunnyvale, CA 94089 no later than **the fifteenth (15th) day of the month following the Date of Grant**, in which case the Award will be cancelled. Participant's failure to notify the Company of his or her rejection of the Award within this specified period will constitute the Participant's acceptance of the Award and his or her agreement with all terms and conditions of the Award, as set forth in the Plan and this Award Agreement, including the Terms and Conditions of French-qualified Restricted Stock Unit Award, attached hereto as Exhibit A, all of which are made a part of this document.

Participant has reviewed the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel, and fully understands all provisions of the Plan and Award Agreement. By accepting this Award, Participant hereby agrees (i) to accept as binding, conclusive, and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and the Award Agreement, (ii) to notify the Company upon any change in the residence address indicated above, and (iii) to the extent required by Section 7 of Exhibit A, the sale of Shares to cover the Tax Withholding Obligations (and any associated broker or other fees) and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express written consent.

ACCURAY INCORPORATED:

By: _____

Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF FRENCH-QUALIFIED RESTRICTED STOCK UNIT AWARD

1. Grant. The Company hereby grants to the individual named in the Notice of Grant (the "Participant") under the Plan an Award of Restricted Stock Units, subject to all of the terms and conditions in this Award Agreement and the Plan, which is incorporated herein by reference. Subject to Section 20(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Award Agreement, the terms and conditions of the Plan will prevail. Restricted Stock Units granted to Participants in France are intended to be French-qualified Restricted Stock Units that qualify for the favorable income tax and social security regime in France, as set forth in the French Plan. Certain events may affect the status of the Restricted Stock Units as French-qualified Restricted Stock Units and the Award may be disqualified in the future. The Company does not make any undertaking or representation to maintain the qualified status of the French-qualified Restricted Stock Units during the life of the Award, and the Participant will not be entitled to any compensation or other amounts if the Restricted Stock Units no longer qualify as French-qualified Restricted Stock Units.

2. Company's Obligation to Pay. Each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Restricted Stock Units will have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, such Restricted Stock Units will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant's death, to his or her estate) in whole Shares, subject to Participant satisfying any applicable tax withholding obligations as set forth in Section 7. Subject to the provisions of Section 4, such vested Restricted Stock Units shall be paid in whole Shares as soon as practicable after vesting, but in each such case within the period sixty (60) days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any Restricted Stock Units payable under this Award Agreement.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the Restricted Stock Units awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant; provided, however, that (i) if a Vesting Date falls on a day upon which the U.S. national securities markets are not open for trading, such Vesting Date shall be delayed until the next trading day, and (ii) if a Vesting Date falls on December 31, such Vesting Date shall be delayed until the next trading day such that the Vesting Date, any sale to cover taxes, and applicable tax reporting all occur in the same calendar year. Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in accordance with any of the provisions of this Award Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs. As detailed in the Notice of Grant, in no case shall the Vesting Date occur prior to the expiration of a one-year period as calculated from the Date of Grant, or such other period as is required to comply with the minimum vesting period applicable to French-qualified Restricted Stock Units under Section L. 225-197-1 of the French Commercial Code, as amended, the relevant Sections of the French Tax Code or of the French Social Security Code, as amended, except in the case of death of the Participant.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested Restricted Stock Units at any time, subject to the terms of the Plan. If so accelerated, such Restricted Stock Units will be considered as having vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units is accelerated in connection with Participant's termination as a Service Provider (provided that such termination is a "separation from service" within the meaning of Section 409A, as determined by the Company), other than due to death**,** and if (x) Participant is a "specified employee" within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated Restricted Stock Units will result in the imposition of additional tax under Section

409A if paid to Participant on or within the six (6) month period following Participant's termination as a Service Provider, then the payment of such accelerated Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Participant's termination as a Service Provider, unless Participant dies following his or her termination as a Service Provider, in which case, the Restricted Stock Units will be paid in Shares to Participant's estate as soon as practicable following his or her death. It is the intent of this Award Agreement that it and all payments and benefits hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the Restricted Stock Units provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Award Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). For purposes of this Award Agreement, "Section 409A" means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture upon Termination of Status as a Service Provider. Notwithstanding any contrary provision of this Award Agreement, the balance of the Restricted Stock Units that have not vested as of the time of Participant's termination as a Service Provider for any or no reason and Participant's right to acquire any Shares hereunder will immediately be forfeited and terminated, except in the event of cessation of employment or service due to death as provided in Section 6 below.

6. Death of Participant. Should Participant cease continuous employment or other service by reason of death prior to a Vesting Date, then all unvested Restricted Stock Units will immediately vest as of the date of Participant's death and the shares underlying the Award shall be issued to (a) the personal representative of Participant's estate or (b) the person or persons to whom the shares are transferred pursuant to Participant's will or the laws of inheritance, in compliance with French civil rules on inheritance, upon their request within a six month period measured from the date of Participant's death. If Participant's heirs do not request distribution or delivery of the shares underlying the Award within six months of Participant's death, as provided herein, the Award shall be cancelled with respect to those shares and Participant's heirs shall forfeit all rights and interests therein.

7. Withholding of Taxes.

(a) Participant's Responsibility; Company's Obligation to Deliver Certificates. Participant acknowledges that, regardless of any action taken by the Company or, if different, Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant or deemed by the Company or the Employer in its discretion to be an appropriate charge to Participant even if legally applicable to the Company or the Employer ("Tax-Related Items"), is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer. Notwithstanding any contrary provision of this Award Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the Tax-Related Items. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalents; and (ii) do not commit to and are under no obligation to structure the terms of the Award or any aspect of the Award to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) Tax Withholding Arrangements. Prior to any relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, by Participant's acceptance of the Award, Participant authorizes and directs the Company and any brokerage firm determined acceptable to the Company to sell on Participant's behalf a whole number of shares from those Shares issued to Participant as the Company determines to be appropriate to

generate cash proceeds sufficient to satisfy the obligation for Tax-Related Items. **By accepting this Award, Participant expressly consents to the sale of Shares to cover Tax-Related Items and agrees and acknowledges that Participant may not satisfy them by any means other than such sale of Shares, unless required to do so by the Administrator or pursuant to the Administrator's express consent.** In the event that such withholding by sale of Shares is problematic under applicable tax or securities law or has materially adverse accounting consequences, Participant authorizes the Company or its respective agents to satisfy the obligations with regard to all Tax-Related Items by (i) delivery of already vested and owned Shares having a fair market value equal to the amount required to be withheld, (ii) withholding otherwise deliverable Shares having a value equal to the amount required to be withheld, (iii) cash payment, (iv) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer, or (v) such other means as the Administrator deems appropriate.

Depending on the withholding method, the Company or the Employer may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates, in which case Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the Share equivalent. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, Participant agrees to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

8. Restrictions on Transfer of Shares. The Participant will not be permitted to sell or transfer any Shares issued to Participant upon vesting of the French-qualified Restricted Stock Units until the second anniversary of the applicable Date of Grant, or such other period as is required to comply with the minimum holding period applicable to Shares underlying French-qualified Restricted Stock Units under Section L. 225-197-1 of the French Commercial Code, as amended or by the French Tax Code or French Social Security Code, as amended to benefit from the favorable tax and social security regime, provided however, that this mandatory holding period shall not apply in the event of Participant's termination of employment by reason of death or Special Disability (as defined in the French Plan). Furthermore, the Shares underlying French-qualified Restricted Stock Units cannot be sold during certain Closed Periods (as defined in the French Plan and as interpreted by the French administrative guidelines), to the extent applicable under French law.

If the Participant qualifies as a managing director under French law ("*mandataires sociaux*," *i.e.*, Président du Conseil d'Administration, Directeur Général, Directeur Général Délégué, Membre du Directoire, Gérant de Sociétés par actions) of the French Subsidiary and is subject to shareholding restrictions under French law, the Participant must hold 20% of the Shares issued pursuant to the Restricted Stock Units in a nominative account until the Participant ceases to serve as a managing director, as long as this restriction is required under French law.

At the Company's discretion, the share certificates for all Shares subject to the French-qualified Restricted Stock Units may bear a legend setting forth the restriction on sale or transfer for the time period set out in this Section 8. In addition, the Shares may be held until the expiration of the holding period, at the Company's discretion, either by the Company or by a transfer agent designated by the Company. In addition, the Shares may be held in an account in Participant's name with a broker designated by the Company or in such manner as the Company may otherwise determine in compliance with French law, and with holding periods.

9. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery,

Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10.No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF RESTRICTED STOCK UNITS OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR AFFILIATE EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Adjustments. In the event of a stock split, a stock dividend or a similar change in Company stock, the number of unvested Restricted Stock Units awarded to Participant under this Award Agreement will be adjusted in accordance with the Plan.

12. Address for Notices. Any notice to be given to the Company under the terms of this Award Agreement will be addressed to the Company at Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089, Attn: Stock Administration, or at such other address as the Company may hereafter designate in writing.

13. Award is Not Transferable. Except to the limited extent provided in Section 6, this Award and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this Award and the rights and privileges conferred hereby immediately will become null and void. Participant may, however, dispose of this Award in Participant's will or through a beneficiary designation.

14. Binding Agreement. Subject to the limitation on the transferability of this Award contained herein, this Award Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

15. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

16. Plan Governs. This Award Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Award Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

17. Administrator Authority. The Administrator will have the power to interpret the Plan and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Restricted Stock Units have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

18. Electronic Delivery. Participant agrees that the Company may deliver by electronic means all documents relating to the Plan, the Restricted Stock Units, or future restricted stock units that may be awarded under the Plan (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or request Participant's consent to participate in the Plan by electronic means. Participant also agrees that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify Participant by electronic means.

19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

20. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

21. Modifications to the Award Agreement. This Award Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Restricted Stock Units.

22. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Award of Restricted Stock Units under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

23. Governing Law and Venue. This Award Agreement will be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Award of Restricted Stock Units or this Award Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California**,** and agree that such litigation will be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Award of Restricted Stock Units is made and/or to be performed.

24. Additional Terms for Non-U.S. Participants. Notwithstanding any provisions in this Award Agreement, for Participants outside the United States, this Award of Restricted Stock Units shall be subject to the additional terms and conditions set forth in Exhibit B to this Award Agreement, including any additional terms and conditions for Participant's country. Moreover, if Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to Participant, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan. Exhibit B constitutes part of this Award Agreement.

25. Waiver. Participant acknowledges that a waiver by the Company of breach of any provision of this Award Agreement shall not operate or be construed as a waiver of any other provision of this Award Agreement, or of any subsequent breach by me or any other Participant of the Plan.

EXHIBIT B

TERMS AND CONDITIONS FOR INTERNATIONAL AWARDS

This Exhibit B includes additional terms and conditions that govern the Restricted Stock Units granted to Participant under the Plan. Further, this Exhibit B includes additional terms and conditions that govern the Restricted Stock Units if Participant resides in one of the countries listed below.

NOTIFICATIONS

This Exhibit B also includes information regarding exchange controls and certain other issues of which Participant should be aware with respect to participation in the Plan. The information is based on the securities, exchange control, and other laws in effect in the respective countries as of June 2016. Such laws are often complex and change frequently. As a result, the Company strongly recommends that Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the notification information may be out of date at the time the Restricted Stock Units vest or Participant sells Shares acquired under the Plan.

In addition, the notification information contained herein is general in nature and may not apply to Participant's particular situation, and the Company is not in a position to assure Participant of a particular result. Accordingly, Participant should seek appropriate professional advice as to how the relevant laws in his or her country may apply to Participant's situation.

Finally, if Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers employment and/or residency to another country after the Restricted Stock Units are granted to Participant, or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to Participant.

A. ADDITIONAL TERMS AND CONDITIONS

1. Nature of Award. In accepting this Award of Restricted Stock Units, Participant acknowledges, understands and agrees to the following:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of this Award of Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future awards of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;

(c) all decisions with respect to future Restricted Stock Unit awards, if any, will be at the sole discretion of the Company;

(d) the Restricted Stock Unit grant and Participant's participation in the Plan shall not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company and shall not interfere with the ability of the Employer to terminate Participant's employment or service relationship (if any) at any time;

(e) Participant is voluntarily participating in the Plan;

(f) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are extraordinary items that are outside the scope of Participant's employment or service contract, if any;

(g) the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not intended to replace any pension rights or compensation;

(h) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;

(i) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from termination of Participant's employment or other service relationship by the Company or the Employer (for any reason whatsoever and whether or not later found to be invalid or in breach of any employment laws in the jurisdiction where Participant is employed or the terms of any employment or service agreement, if any), and in consideration of the grant of this Award of Restricted Stock Units, Participant agrees not to institute any claim against the Company or the Employer or any of the other Affiliates of the Company;

(k) unless otherwise agreed with the Company, the Restricted Stock Units and the Shares subject to the Restricted Stock Units, and the income and value of the same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of an Affiliate of the Company;

(l) in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that Participant is no longer actively employed and will not be extended by any notice period mandated under local law (*e.g.*, active employment would not include a period of "garden leave" or similar period pursuant to local law); the Administrator shall have the exclusive discretion to determine when Participant is no longer actively employed for purposes of this Award of Restricted Stock Units; and

(m) neither the Company, the Employer nor any other Affiliate of the Company shall be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or any amounts due to Participant pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any Shares acquired upon settlement.

2. No Advice Regarding Award. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan or Participant's acquisition or sale of the underlying Shares. Participant understands and agrees that Participant should to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

3. ***Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Award Agreement and any other Restricted Stock Unit grant materials by and among, as applicable, the Employer, the Company and its other Affiliates for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.***

Participant understands that the Company and the Employer may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

Participant understands that Data will be transferred to a plan broker or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration, and management of the Plan. Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have

different data privacy laws and protections than Participant's country. Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. Participant authorizes the Company, the broker, and any other possible recipients that may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan. Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that if he or she resides outside the United States he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, Participant understands that he or she is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, his or her employment status or service with the Employer will not be affected; the only consequence of refusing or withdrawing Participant's consent is that the Company would not be able to grant Participant Restricted Stock Units or other equity awards or administer or maintain such awards. Therefore, Participant understands that refusing or withdrawing his or her consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her local human resources representative.

4.Language**.** By accepting this Award of French-qualified Restricted Share Units granted under Sections L. 225-197-1 and seq. of the French commercial code, the Participant confirms having read and understood the Plan and this Award Agreement, which are provided in the English language. The Participant accepts the terms and conditions of these documents accordingly.

Langue utilisée: En acceptant cette attribution d'Action Gratuites soumises au régime spécifique fiscal et de sécurité sociale prévu aux articles L. 225-197-1 et suivants du code de commerce français, le Participant confirme avoir lu et compris le Plan et cette Convention, qui lui ont été remis en langue anglaise. Le Participant accepte ainsi les termes et conditions inclus dans ces document.

5. Imposition of Other Requirements. The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the Restricted Stock Units, and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law with respect to the issuance or sale of shares or to facilitate the administration of the Plan, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

6. Insider Trading Notification. Participant acknowledges that, depending on his or her country, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares or rights to shares (*e.g.*, Restricted Stock Units) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions, and Participant should speak to his or her personal advisor on this matter.

7. Foreign Asset/Account Reporting Notification. Participant understands that his or her country may have certain exchange control and/or foreign asset/account reporting requirements which may affect Participant's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends received or sale proceeds arising from the sale of Share) in a brokerage or bank account outside of Participant's country. Participant may be required to report such accounts, assets or transactions to the tax or other authorities in Participant's country. Participant acknowledges that it is his or her responsibility to comply with any applicable regulations, and Participant should speak to his or her personal advisor on this matter.

B. COUNTRY-SPECIFIC TERMS, CONDITIONS AND NOTIFICATIONS

BELGIUM

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Participant is required to report any securities (*e.g.*, Shares acquired under the Plan) held or bank accounts opened (including brokerage accounts) opened and maintained outside Belgium on his or her annual tax return. In a separate report, Participant will be required to provide the National Bank of Belgium with certain details regarding such foreign accounts (including the account number, bank name and country in which any such account was opened). This report, as well as information on how to complete it, can be found on the website of the National Bank of Belgium.

CANADA

TERMS AND CONDITIONS

Form of Settlement. If Participant is resident in Canada, Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

Termination of Employment. This provision replaces Section A.1(l) of this Exhibit B:

For purposes of the Restricted Stock Units, in the event of Participant's termination as a Service Provider (whether or not in breach of any employment law in the country where Participant resides, even if otherwise applicable to Participant's employment benefits from the Employer, and whether or not later found to be invalid), Participant's right to vest in the Restricted Stock Units under the Plan, if any, will terminate effective as of the date that is the earliest of (i) the date that Participant's employment with the Company, the Employer or any other Affiliate is terminated; (ii) the date Participant receives notice of termination of employment from the Company or the Employer (regardless of any notice period or period of pay in lieu of such notice required under Canadian employment law including, but not limited to, statutory law, regulatory law and/or common law); and (iii) the date Participant is no longer actively providing services to the Company or the Employer. The Administrator shall have the exclusive discretion to determine when Participant is no longer actively providing services to the Employer.

The following Terms and Conditions apply if Participant is a resident of Quebec:

Authorization to Release and Transfer Necessary Personal Information. This provision supplements Section A.3 of this Exhibit B:

Participant hereby authorizes the Company (including its Affiliates), the Employer and the Company's representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. Participant further authorizes the Company, any Affiliates, and any stock plan service provider that may be selected by the Company to assist with the Plan to disclose and discuss the Plan with their respective advisors. Participant further authorizes the Company, the Employer and any Affiliates to record such information and to keep such information in Participant's employee file.

French Language Provision. The parties acknowledge that it is their express wish that this Award Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Les parties reconnaissent avoir exigé la redaction en anglais de cette convention ("Award Agreement"), *ainsi que de tous documents exécutés, avis donnés et procedures judiciaries intentées, directement ou indirectement, relativement à la présente convention.*

NOTIFICATIONS

Securities Law Information. Participant is permitted to sell Shares acquired under the Plan through the designated broker appointed under the Plan, if any, provided that the resale of such shares takes place outside of Canada through the facilities of a stock exchange on which the Shares are listed (*i.e.*, the NASDAQ Global Select Market)

Foreign Asset/Account Reporting Information. Foreign property, including Shares and Restricted Stock Units, held by a Canadian resident must generally be reported annually on a Form T1135 (Foreign Income Verification Statement) if the total cost of Participant's foreign property exceeds C$100,000 at any time during the year. Thus Restricted Stock Units must be reported – generally at a nil cost - if the C$100,000 cost threshold is exceeded because other foreign property is held by the employee. When shares are acquired, their cost generally is the adjusted cost base ("ACB") of the shares. The ACB would ordinarily equal the fair market value of the shares at the time of acquisition, but if the employee owns other shares of the same company, this ACB may have to be averaged with the ACB of the other shares.

FRANCE

NOTIFICATIONS

Exchange Control Information. French residents with foreign account balances exceeding €1,000,000 must report any transactions carried out on those accounts to the Bank of France on a monthly basis. French residents also must report all foreign bank and brokerage accounts on an annual basis (including accounts opened or closed during the tax year) on a specific form together with the income tax return. Failure to comply could trigger significant penalties.

GERMANY

NOTIFICATIONS

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments in connection with securities (including proceeds realized upon the sale of Shares or the receipt of dividends), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically and the form of report ("*Allgemeine Meldeportal Statistik*") can be accessed via the Bundesbank's website (www.bundesbank.de), in both German and English. Participant is responsible for complying with the reporting requirements.

GREECE

There are no country-specific provisions.

HONG KONG

TERMS AND CONDITIONS

Sale of Shares. Shares received at vesting are accepted as a personal investment. In the event the Restricted Stock Units vest within six months of the Date of Grant, Participant agrees that he or she will not offer to the public or otherwise dispose of the shares prior to the six-month anniversary of the Date of Grant.

Form of Settlement. The Award of Restricted Stock Units will be settled in Shares only. In no event will any Restricted Stock Units be settled in cash, notwithstanding any discretion contained in the Plan to the contrary.

NOTIFICATIONS

Securities Law Information: *Warning. The contents of the Award Agreement, including this Exhibit B, have not been reviewed by any regulatory authority in Hong Kong. Participant should exercise caution in relation to the offer. If Participant is in any doubt about any of the contents of the Award Agreement, including this Exhibit B, or the Plan,*

Participant should obtain independent professional advice. The Restricted Stock Units and any Shares issued at vesting of the Restricted Stock Units do not constitute a public offering of securities under Hong Kong law and are available only to employees of the Company or an Affiliate of the Company. The Award Agreement, including this Exhibit B, the Plan, the Notice of Grant, and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a "prospectus" for a public offering of securities under the applicable securities legislation in Hong Kong. The Restricted Stock Units and any related documentation are intended only for the personal use of Participant and may not be distributed to any other person.

ITALY

TERMS AND CONDITIONS

Data Privacy Notice and Consent. This provision replaces in its entirety Section A.3 of this Exhibit B:

Participant understands that the Employer, the Company and any Affiliate of the Company may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any Affiliate of the Company, details of all Restricted Stock Units or other entitlement to Shares granted, awarded, canceled, vested, unvested or outstanding in Participant's favor ("Data"), for the exclusive purpose of implementing, managing and administering the Plan.

Participant also understands that providing the Employer with Data is necessary for the performance of the Plan and that Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect Participant's ability to participate in the Plan. The Controller of personal data processing is Accuray Incorporated, with registered offices at 1310 Chesapeake Terrace, Sunnyvale, California 94089, United States of America, and, pursuant to Legislative Decree no. 196/2003, its representative in Italy.

Participant understands that Data will not be publicized, but it may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. Participant understands that Data may also be transferred to the Company's stock plan service provider or such other administrator that may be engaged by the Company in the future. Participant further understands that the Company and/or any Affiliate of the Company will transfer Data among themselves as necessary for the purpose of implementing, administering and managing Participant's participation in the Plan, and that the Company and/or any Affiliate of the Company may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom Participant may elect to deposit any Shares acquired at vesting of the Restricted Stock Units. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing Participant's participation in the Plan. Participant understands that these recipients may be located in or outside the European Economic Area, such as in the United States or elsewhere. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

Participant understands that Data-processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require Participant's consent thereto, as the processing is necessary to performance of contractual obligations related to implementation, administration, and management of the Plan. Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, Participant has the right to, including but not limited to, access, delete, update, correct, or terminate, for legitimate reason, the Data processing.

Furthermore, Participant is aware that Data will not be used for direct marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting Participant's local human resources representative.

Plan Document Acknowledgment. In accepting the grant of the Restricted Stock Units, Participant acknowledges that he or she has received a copy of the Plan and the Award Agreement and has reviewed the Plan and the Award Agreement, including this Exhibit B, in their entirety and fully understands and accepts all provisions of the Plan and the Award Agreement, including this Exhibit B.

Participant acknowledges that he or she has read and specifically and expressly approves the following sections of the Award Agreement: Section 3 on Vesting and Termination; Section 7 on Tax Withholding; Section 23 on Governing Law and Venue; Section A.1 of this Exhibit B on Nature of Award; Section A.4 of this Exhibit B on Language; and the Data Privacy Notice and Consent section included in this Exhibit B.

NOTIFICATIONS

Exchange Control Information. Italian residents who, at any time during the fiscal year, hold foreign financial assets (*e.g.*, cash, Shares, etc.) which may generate income taxable in Italy are required to report such investments or assets on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad.

JAPAN

NOTIFICATIONS

Foreign Asset/Account Reporting Information. Japanese residents are required to report details of any assets held outside Japan as of December 31, including Shares acquired under the Plan, to the extent such assets have a total net fair market value exceeding ¥50,000,000. Such report will be due by March 15 each year. Participant is responsible for complying with this reporting obligation if applicable and Participant should consult his or her personal tax advisor in this regard.

NETHERLANDS

There are no country-specific provisions.

SINGAPORE

NOTIFICATIONS

Restriction on Sale of Shares. To the extent Participant sells, offers to sell or otherwise disposes of Shares acquired under the Plan within six months of the date of grant, Participant is permitted to dispose of such shares through any designated broker appointed under the Plan, provided the resale of Shares acquired under the Plan takes place outside Singapore through the facilities of a stock exchange on which the Shares are listed. The Company's shares are currently listed on the NASDAQ Global Select Market.

Securities Law Information. The Award of Restricted Stock Units is being made to Participant in reliance on the "Qualifying Person" exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) ("SFA"). The Plan has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Participant should note that the Award of Restricted Stock Units is subject to section 257 of the SFA, and Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the Restricted Stock Units, unless such sale or offer in Singapore is made (i) after six months from the Date of Grant or (ii) pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA.

Chief Executive Officer and Director Notification Obligation. If Participant is the Chief Executive Officer, or a director, associate director, or shadow director of the Company's Singapore Affiliate, Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Company's Singapore Affiliate in writing when Participant receives an interest (*e.g.*, Restricted Stock Units or Shares) in the Company or any Affiliate of the Company. In addition, Participant must notify the Company's Singapore Affiliate when he or she sells Shares the Company or of any Affiliate of the Company (including when Participant sells Shares issued upon vesting of the Restricted Stock Units). These notifications must be made within two days of acquiring or disposing of any interest in the Company or any Affiliate of the Company. In addition, a notification of Participant's interests in the Company or any Affiliate of the Company must be made within two days of becoming the Chief Executive Officer or a director.

SWITZERLAND

NOTIFICATIONS

Securities Law Information. The Award of Restricted Stock Units is not intended to be a public offering in or from Switzerland. Neither this document nor any other materials relating to the offer constitutes a prospectus as such term is understood pursuant to article 652a of the Swiss Code of Obligations, and their this document nor any other materials relating to the grant may be publicly distributed or otherwise made publicly available in Switzerland. Neither this document nor any other offering or marketing material relating to the Plan has been or will be filed with, approved or supervised by any Swiss regulatory authority (in particular, the Swiss financial Market Supervisory Authority).

UNITED ARAB EMIRATES

NOTIFICATIONS

Securities Law Information. Participation in the Plan is being offered only to Employees and Consultants of the Company and its Affiliates, and is in the nature of providing equity incentives to those providing services in the United Arab Emirates. The Plan and the Award Agreement are intended for distribution only to such Participants and must not be delivered to, or relied on by, any other person. Participant should conduct Participant's own due diligence on the securities. If Participant does not understand the contents of the Plan or the Award Agreement, Participant should consult an authorized financial adviser. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan, and neither the Ministry of Economy nor the Dubai Department of Economic Development has approved the Plan or the Award Agreement, nor taken any steps to verify the information set out therein and has any responsibility for such documents.

UNITED KINGDOM

TERMS AND CONDITIONS

Tax Withholding. This provision supplements Section 7 of the Award Agreement:

If payment or withholding of the Tax-Related Items is not made within ninety (90) days of the end of the U.K. tax year in which the event giving rise to the liability for income tax (the "Due Date") occurs, or such other period specified in Section 222(1)(c) of the U.K. Income Tax (Earnings and Pensions) Act 2003, the amount of any uncollected income tax may constitute a loan owed by Participant to the Employer, effective on the Due Date. Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty's Revenue and Customs ("HMRC"), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 7 of the Award Agreement.

Notwithstanding the foregoing, Participant understands and agrees that if he or she is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), Participant will not be eligible for such a loan to cover the income tax liability. In the event that Participant is a director or executive officer and income tax is not collected from or paid by Participant by the Due Date, Participant understands that the amount of any uncollected Tax-Related Items may constitute a benefit to Participant on which additional income tax and national insurance contributions ("NICs") may be payable. Participant understands and agrees that he or she will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Employer (as appropriate) for the value of any employee NICs due on this additional benefit which the Company or the Employer may recover from Participant by any of the means referred to in Section 7 of the Award Agreement.

AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement ("Agreement") is entered into and effective as of July 1, 2021 ("Effective Date"), by and between Accuray Incorporated, a Delaware corporation (the "Company"), and Suzanne Winter ("Executive").

RECITALS

A. The Company is in the business of developing, manufacturing and selling radiation oncology, including radio surgery and radiation therapy, technologies and devices (the "Business").

B. The Company previously entered into an Executive Employment Agreement with Executive, effective January 1, 2021 (the "Original Agreement").

C. The Company wishes to amend and restate the Original Agreement in connection with the promotion of Executive to serve as President as of the Effective Date.

D. As of the Effective Date, Executive has already commenced full-time employment with the Company.

NOW, THEREFORE, the parties agree that the Original Agreement is hereby amended and restated to read in its entirety as follows:

1. Position and Duties.

(a) During the term of this Agreement, Executive will be employed by the Company to serve as President of the Company, reporting to the Chief Executive Officer of the Company. Executive will be responsible for: (i) performing the duties and responsibilities customarily expected to be performed by such position and (ii) performing such other duties and functions as are reasonably required and/or as may be reasonably prescribed by the Company from time to time.

(b) The location of Executive's employment will be based out of Executive's home office in Nevada, but Executive will be required to travel to Company's headquarter offices and other geographic locations in connection with the performance of his/her duties.

2. Standards of Performance. Executive will at all times faithfully, industriously and to the best of his/her ability, experience and talents perform all of the duties required of and from him/her pursuant to the terms of this Agreement. Executive will devote his/her full business energies and abilities and all of his/her business time to the performance of his/her duties hereunder and will not, without the Company's prior written consent, render to others any service of any kind (whether or not for compensation) that, in the Company's sole but reasonable judgment, would interfere with the full performance of his/her duties hereunder. Notwithstanding the foregoing, Executive is permitted to spend reasonable amounts of time to manage his/her personal financial and legal affairs and, with the Company's consent which will not be unreasonably withheld, to serve on one civic, charitable, not-for-profit, industry or corporate board or advisory committee, provided that such activities, individually and collectively, do not materially interfere with the performance of Executive's duties hereunder. In no event will Executive engage in any activities that could reasonably create a conflict of interest or the appearance of a conflict of interest. Executive shall be subject to the Company's policies, procedures and approval practices, as generally in effect from time to time.

3. Term.

(a) Term of Agreement. This Agreement will have an initial term beginning on the Effective Date and ending on December 31, 2023 (the "Initial Term"). Thereafter, this Agreement will renew automatically for additional three (3) year terms (each, an "Additional Term" and together with the Initial Term, the "Term"), unless either party provides the other party with written notice of non-renewal at least sixty (60) days prior to the date of automatic renewal; provided, however, that if the Company enters into a definitive agreement to be acquired and the transactions contemplated thereby would result in the occurrence of a Change in Control (as defined below) if consummated, then the Company will no longer be permitted to provide Executive with written notice to not renew this Agreement unless such definitive agreement is terminated without the Change in Control being consummated. If the Change in Control is consummated, the Agreement will continue in effect through the longer of the date that is eighteen (18) months following the effective date of the Change in Control or the remainder of the Term then in effect (for purposes of clarification, it will be possible for the Term of the Agreement to automatically extend after the Company enters into the definitive agreement, but before the Change in Control is consummated). If the definitive agreement is terminated without the transactions contemplated thereby having been consummated and at the time of such termination there is at least twelve (12) months remaining in the Term, the Agreement will continue in effect for the remainder of the Term then in effect, but if there is less than twelve (12) months remaining in the Term then in effect, the Agreement will automatically extend for an additional three (3) years from the date the definitive agreement is terminated. If Executive becomes entitled to benefits under Section 5 during the term of this Agreement, the Agreement will not terminate until all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

(b) At-Will Employment. The Company and Executive acknowledge that, notwithstanding the foregoing, Executive's employment is and will continue to be at-will, as defined under applicable law. As an at-will employee, either the Company or the Executive may terminate the employment relationship at any time, with or without cause; provided, however, that in connection with such termination, the Company will provide Executive with any applicable benefits under Section 5 to which Executive is entitled, all in accordance with the terms and conditions thereof.

4. Compensation and Benefits.

(a) Base Salary. As an annual base salary ("Base Salary") for all services rendered pursuant to this Agreement, Executive will be paid an initial Base Salary in the gross amount of $540,000 calculated on an annualized basis, less necessary withholdings and authorized deductions, and payable pursuant to the Company's regular payroll practices at the time. The Base Salary is first subject to review and adjustment within the first three (3) months after the end of the fiscal year that includes the Effective

Date, and, thereafter, subject to periodic review and adjustment not less frequently than annually within the first three (3) months after the end of the next successive fiscal year, in the sole discretion of the Company. Executive's Base Salary will not be reduced from the level in effect from time to time, except that the Base Salary may be reduced in connection with a salary reduction program of general application to senior executives of the Company where each experiences a substantially similar reduction on a percentage basis.

(b) Bonus. During Executive's employment under this Agreement, Executive will be eligible for a bonus, subject to the terms and conditions of the Company's bonus plan, as in effect from time to time (the "Bonus Plan"), which is applicable to senior executives of the Company. The target amount of Executive's annual bonus is ninety percent (90%) of Executive's annual Base Salary (as defined in the Company's Bonus Plan as then in effect). However, payment of the bonus will be conditioned on the Company's achievement of corporate performance objectives approved by the Company and, if applicable, Executive's achievement of individual performance metrics to be established annually and approved by the Company, all as established pursuant to the Company's Bonus Plan as then in effect, and the bonus may be zero. For the avoidance of doubt, the bonus will be payable only if the corporate and/or individual performance objectives approved by the Company are achieved as determined by the Company, subject to the Company's right to exercise discretion in determining the amount of the bonus to be awarded, if any, as set forth in the Company's Bonus Plan. To encourage continued tenure with the Company, Executive must be employed by the Company as of the payment date to earn and be eligible for a bonus for the year to which the bonus relates, unless otherwise provided in Section 5. Bonuses will be paid out according to the terms of the Bonus Plan.

(c) Equity Incentive Awards. Executive will be eligible to receive awards of stock options, restricted stock units, performance stock units, or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Company's Board of Directors (the "Board") or its Compensation Committee will determine in its discretion whether Executive will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time.

(d) Flexible Time Off and Benefits. Executive will accrue and be allowed to use flexible time off for vacation, illness and holidays pursuant to the Company's policies that apply to executive officers of the Company. In addition, Executive will be entitled to participate in any plans regarding benefits of employment, including pension, profit sharing, group health, disability insurance and other employee pension and welfare benefit plans now existing or hereafter established to the extent that Executive is eligible under the terms of such plans and if the other executive officers of the Company generally are eligible to participate in such plan. The Company may, in its sole discretion and from time to time, establish additional senior management benefit plans as it deems appropriate. Executive understands that any such plans may be modified or eliminated in the Company's sole discretion in accordance with applicable law, provided that no such modification or elimination shall result in reducing or eliminating any benefits in which Executive's right has vested.

(e) Reimbursement of Business Expenses. The Company will promptly reimburse to Executive his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Agreement, and in accordance with the policies and procedures established by the Company; provided that each reimbursement shall be requested within two (2) months after being incurred.

(f) Sarbanes-Oxley Act Loan Prohibition and Company Compensation-Related Polices. To the extent that any Company benefit, program, practice, arrangement or this Agreement would or might otherwise result in Executive's receipt of an illegal loan (the "Loan"), the Company shall use commercially reasonable efforts to provide Executive with a substitute for the Loan that is lawful and of at least equal value to Executive. If this cannot be done, or if doing so would be significantly more expensive to the Company than making the Loan, the Company need not make the Loan to Executive or provide him/her a substitute for it. Further, Executive acknowledges that any bonus or equity award provided for in this Agreement or otherwise awarded to him/her shall be subject to the Company's policies regarding recoupment and clawback, as such policies may be amended from time to time, and agrees that he/she will be subject to, and shall comply with, the Company's stock ownership requirements which are set forth in its Amended and Restated Corporate Governance Guidelines, as such requirements may be amended from time to time, and the Company's Insider Trading Policy, as amended from time to time.

5. Termination of Employment.

(a) By Company Without Cause. Subject to the last paragraph of this Section 5(a), the Company may terminate Executive's employment without Cause (as defined below) effective on thirty (30) days' written notice (such thirty (30)-day period, the "Notice Period", and such notice, the "Termination Notice"), during which notice period Executive may be relieved of his/her duties and placed on paid terminal leave. In such event and subject to the other provisions of this Agreement, Executive will be entitled to:

(i) continued coverage under the Company's insurance benefit plans through the termination date and such other benefits to which he/she may be entitled pursuant to the Company's benefit plans, provided, however, that Executive shall not participate in any severance plan of the Company;

(ii) payment of all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and

(iii) reimbursement of expenses incurred on or before the termination date in accordance with Section 4(e), above, if a request for reimbursement of the expenses was timely submitted to the Company; plus

(iv) payment of the equivalent of the Base Salary, as then in effect (provided that if there has been any reduction in the Base Salary that would otherwise constitute Good Reason, then the rate in effect prior to such reduction), that he/she would have earned over the next twelve (12) months following the termination date (less necessary withholdings and authorized deductions) (the "Severance Payment"), payable in a lump sum on the first regularly scheduled payroll date following the date the Release becomes effective and irrevocable (the "Release Effective Date"), but in any event within ten (10) business days of the Release Effective Date and subject to Section 16, below;

(v) either (1) if Executive's termination date occurs on or following the date on which bonus payments to similarly situated executives are made under the Bonus Plan for the fiscal year prior to the fiscal year in which Executive's termination occurs (the "Prior Fiscal Year"), then payment of a prorated portion of the actual bonus Executive would have otherwise received for the fiscal year during which the termination occurs, as if Executive had remained employed by the Company through the date that would have otherwise been required to earn the bonus, but without the Board or any committee of the Board exercising any negative discretion to reduce the amount of the award, calculated by dividing the number of days from the start of the fiscal year through the termination date by 365 and multiplying the amount of such actual bonus Executive would have otherwise received by this percentage (but not by more than 100%), and paid at the same time as bonuses are paid to other Company executives that are similarly

situated to Executive; provided, however, that if the termination date is after the seventh month of the fiscal year, the actual bonus will not be prorated and Executive will receive 100% of such actual bonus Executive would have otherwise received for that fiscal year (without the Board or any committee of the Board exercising any negative discretion) at the same time as bonuses are paid to other Company executives that are similarly situated to Executive or (2) if Executive's termination date occurs prior to the date on which bonus payments to similarly situated Company executives are made under the Bonus Plan for the Prior Fiscal Year, then payment of the actual bonus Executive would have otherwise received under the Bonus Plan for the Prior Fiscal Year, as if Executive had remained employed by the Company through the date that would have otherwise been required to earn the bonus, but without the Board or any committee of the Board exercising any negative discretion to reduce the amount of the award, paid at the same time a bonuses are paid to other Company executives that are similarly situated to Executive.

(vi) subject to Section 5(g), reimbursement of insurance premiums payable to retain group health coverage as of the termination date for himself/herself and his/her eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") for twelve (12) months from the date Executive becomes COBRA eligible or the maximum period of COBRA coverage, whichever is less; provided that Executive must submit a reimbursement request in accordance with Company policy within thirty (30) days of paying such insurance premiums. The Company will reimburse the executive within thirty (30) days of receiving a properly submitted request. In addition, if Executive accepts other employment within such twelve (12) months, the Company's obligation under this Section 5(a)(vi) will be extinguished as of the date Executive becomes eligible to be covered under the group health plan of Executive's new employer; and

(vii) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

The payments and benefits set forth in Sections 5(a)(i)-(iii) shall be referred to as the "Accrued Benefits", and the payments and benefits set forth in Sections 5(a)(iv)-(vii) shall be referred to as the "Severance Benefits". Executive shall not receive the Severance Benefits, the "Enhanced Severance Benefits" as provided in Section 5(e), or the Termination Notice Replacement Payment (as defined below) unless Executive executes the separation agreement and general release attached as Exhibit A (the "Release"), and the same becomes irrevocable pursuant to its terms within the 60-day period following his/her termination of employment. Notwithstanding the foregoing paragraphs of this Section 5(a), the Company may terminate Executive's employment prior to the expiration of the Notice Period, and in the case of such termination, the Company shall pay Executive the equivalent of the Base Salary he/she would have earned over the remainder of the Notice Period (less necessary withholdings and authorized deductions) at his/her then current Base Salary rate (the "Termination Notice Replacement Payment"), subject to Executive satisfying the requirements of the previous sentence. Any such Termination Notice Replacement will be paid in a lump sum at the same time as the Severance Payment.

(b) By Company With Cause. The Company may terminate Executive's employment at any time and without prior notice, written or otherwise, for Cause. As used in this Agreement, "Cause" shall mean any of the following conduct by Executive: (i) material breach of this Agreement, or a material violation of a Company policy or of a law, rule or regulation applicable to the Company or its operations; (ii) demonstrated and material neglect of duties, or failure or refusal to perform the material duties of his/her position, or the failure to follow the reasonable and lawful instructions of the Company; (iii) gross misconduct or dishonesty, self-dealing, fraud or similar conduct that the Company reasonably determines has caused, is causing or reasonably is likely to cause harm to the Company; or (iv) conviction of or plea of guilty or *nolo contendere* to any crime other than a traffic offense that is not punishable by a sentence of incarceration. Termination pursuant to Section 5(b)(ii) shall be effective only if such failure continues after

Executive has been given written notice thereof and fifteen (15) business days thereafter in which to present his/her position to the Company or to cure the same, unless the Company reasonably determines that the reason(s) for termination are not capable of being cured. In the event of termination for Cause, Executive will be entitled only to the Accrued Benefits through the termination date, which will be the date on which the notice is given. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs), or severance payment of any kind nor to make any payment in lieu of notice.

(c) Incapacity or Death.

(i) If Executive becomes unable, due to physical or mental illness or injury, to perform the essential duties of his/her position for more than twelve (12) consecutive weeks in any twelve (12) month period during this Agreement with or without reasonable accommodation ("Incapacity"), the Company has the right to terminate Executive's employment on fifteen (15) days' written notice. Further, Executive's employment pursuant to this Agreement shall be immediately terminated without notice by the Company upon the death of Executive.

(ii) In the event of termination for Incapacity or if Executive dies while actively employed pursuant to this Agreement, (i) Executive will be entitled to receive the Accrued Benefits, (ii) any unvested equity awards previously granted to Executive that are scheduled to vest based solely on the achievement of service-based conditions ("Time-based Equity Awards") shall become immediately vested to the extent that such Time-based Equity Awards would have vested within six (6) months after the date of termination had such Time-based Equity Awards had vesting schedules that provided for pro-rata vesting on a monthly basis over the entirety of the vesting schedule, and (iii) with respect to any equity awards that are scheduled to vest based on the achievement of performance-based conditions (which may include additional service-based conditions) ("Performance-based Equity Awards") for which the performance period is scheduled to end within six (6) months after the date of termination, each such Performance-based Equity Award will remain outstanding until the date the Board or Compensation Committee of the Board (the "Compensation Committee") determines whether the applicable performance condition is achieved (provided that in no event will such Performance-based Equity Award remain outstanding beyond the Performance-based Equity Award's maximum term to expiration) and will vest in accordance with its terms to the extent such performance condition is achieved.

(d) Resignation for Good Reason. Executive may terminate this Agreement for Good Reason (as defined below) by giving written notice to the Company of such termination, subject to Executive complying with the notice, cure period and other requirements set forth within the definition of Good Reason below. As used in this Agreement, "Good Reason" shall mean the occurrence of any one of the following without Executive's written consent: (i) a material reduction in Executive's base compensation (which includes Base Salary, the Executive's target bonus and any other base compensation) and/or a material breach of this Agreement by the Company resulting from the failure to provide the compensation or benefits required in Section 4, (ii) any action or inaction that constitutes a material breach by the Company of this Agreement; (iii) a material diminution in Executive's authority, duties or responsibilities such that they are materially inconsistent with his/her position as President of the Company; and (iv) relocation of the Company's office where Executive is providing Executive's services to the Company to a location that increases Executive's commute by thirty (30) miles or more, provided that no termination for Good Reason shall be effective until Executive has given the Company written notice (pursuant to Section 11 below) within sixty (60) days after Executive becomes aware of the initial occurrence of any of the foregoing specifying the event or condition constituting the Good Reason and the specific reasonable cure requested by Executive, and the Company has failed to cure the occurrence within thirty (30) days of receiving written notice from Executive, and Executive resigns within six (6) months after Executive becomes aware of the initial occurrence. In the event of a termination for Good Reason, Executive will be entitled to the Accrued Benefits and the Severance Benefits, on the same conditions, form of payment and timing as set forth in Section 5(a).

(e) Effect of Change in Control. If the Company terminates Executive's employment with the Company without Cause (excluding due to Executive's death or Incapacity) or if Executive resigns from such employment for Good Reason, and, in each case, such termination occurs during the Change in Control Period (as defined below), Executive will be entitled to the Accrued Benefits, and subject to the same conditions set forth in the final paragraph of Section 5(a), (i) two (2) times the Severance Payment set forth in Section 5(a)(iv), paid in the same form (i.e., a lump sum) and at the same time as the Severance Payments set forth in Section 5(a)(iv), (ii) subject to Section 5(g), the reimbursement of Executive's insurance premiums for twelve (12) months in the same form and at the same time and under the same conditions as provided in Section 5(a)(vi), (iii) a taxable monthly payment (which may be used for any purpose) equal to actual the COBRA reimbursement payment that Executive receives under Section 5(e)(ii) for any particular month, (iv) two hundred percent (200%) of Executive's target bonus for the fiscal year during which termination occurs, but no less than two hundred percent (200%) of the target bonus in effect for the fiscal year immediately prior to the Change in Control if the Change in Control occurs within the first three (3) months of the fiscal year, payable at the same time as the payment under clause (i) of this Section 5(e), (v) all outstanding unvested equity awards previously granted to Executive shall become immediately vested (the "Enhanced Severance Benefits"), with Performance-based Equity Awards vesting at target unless otherwise specified in the applicable Performance-based Equity Award's award agreement and (vi) payment for executive outplacement assistance services with the Company's then current outplacement services vendor and in accordance with the Company's then current policies and practices with respect to outplacement assistance for other executives of the Company for up to twelve (12) months after the termination date.

For the avoidance of doubt, if Executive's termination without Cause (excluding due to Executive's death or Incapacity) or resignation for Good Reason occurs prior to a Change in Control, then any unvested portion of Executive's outstanding equity awards will remain outstanding until the earlier of (i) the date that is three (3) months following the termination of Executive's employment or (ii) the date that a Change in Control occurs (provided that in no event will any of Executive's equity awards remain outstanding beyond the equity award's maximum term to expiration). In the event that a Change in Control does not occur by the date that is three (3) months following the termination of Executive's employment, any unvested portion of Executive's equity awards automatically will be forfeited permanently without having vested. Further, for any Performance-based Equity Awards, the performance-based vesting component of the equity awards shall not be deemed to be automatically achieved as a result of the application of Section 5(e)(v) but will remain outstanding during the three (3) month period following Executive's termination or through the date of the Change in Control, as applicable, to determine whether a Change in Control would have occurred within three (3) months of the termination of Executive's employment and, if so, the extent to which the performance condition is achieved, such determination to be made in accordance with the procedures set forth in the applicable award agreement. If the performance condition is satisfied and that would cause the award to become eligible to vest based on continued service, then clause (v) of this Section 5(e) will cause the service-based vesting component to be deemed satisfied and the vesting of the equity award will be accelerated as to the portion of the award that became eligible to vest. For clarity, if there is no service-based condition that applies with respect to any portion of such equity award upon such satisfaction of the performance condition, such portion of the equity award will immediately vest upon such satisfaction of the performance condition.

For the sake of clarity, if any payments or benefits are payable under this Section 5(e), no payments or benefits shall be made under any other subsection of this Section 5, including Section 5(a) and Section 5(d), and any Enhanced Severance Benefits will be reduced by any Severance Benefits that may have been paid or provided with respect to any termination triggering Severance Benefits that occurs during the three-month period prior to a Change in Control (this provision, the "**Non-duplication Provision**").

As used in this Agreement, a "Change in Control" shall mean any of the following events:

(i) the acquisition by any Group or Person (as such terms are defined in Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than (A) a trustee or other fiduciary holding securities of the Company under an employee benefit plan of the Company or (B) an entity in which the Company directly or indirectly beneficially owns fifty percent (50%) or more of the voting securities of such entity (an "Affiliate"), of any securities of the Company, immediately after which such Group or Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of fifty percent (50%) or more of (X) the outstanding shares of Common Stock or (Y) the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors;

(ii) the Company (and/or its subsidiaries) is a party to a merger or consolidation with a Person other than an Affiliate, which merger or consolidation results in (a) the holders of voting securities of the Company outstanding immediately before such merger or consolidation failing to continue to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) fifty percent (50%) or more of the combined voting power of the then outstanding voting securities of the corporation or entity resulting from or surviving such merger or consolidation or (b) individuals who are directors of the Company just prior to such merger or consolidation not constituting more than fifty percent (50%) of the members of the Board of Directors of the surviving entity or corporation immediately after the consummation of such merger or consolidation; or

(iii) all or substantially all of the assets of the Company and its subsidiaries are, in any transaction or series of transactions, sold or otherwise disposed of (or consummation of any transaction, or series of related transactions, having similar effect), other than to an Affiliate;

provided, however, that in no event shall a "Change in Control" be deemed to have occurred for purposes of this Agreement solely because the Company engages in an internal reorganization, which may include a transfer of assets to, or a merger or consolidation with, one or more Affiliates. Additionally, with respect to the payment of any "nonqualified deferred compensation" within the meaning of section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), that is not exempt from section 409A of the Code, no event shall constitute a Change in Control unless it also constitutes a change in the ownership of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(v)), a change in effective control of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vi)), or a change in the ownership of a substantial portion of the assets of the Company (as defined in Treasury Regulation section 1.409A-3(i)(5)(vii)).

As used in this Agreement, a "Change in Control Period" shall mean the period beginning three (3) months prior to, and ending eighteen (18) months following, a Change in Control.

(f) Voluntary Resignation without Good Reason. Executive may terminate this Agreement without Good Reason effective on sixty (60) day's written notice, unless the Company in its sole discretion accepts the resignation earlier. In the event that Executive resigns without Good Reason as defined above in Section 5(d), Executive will be entitled only to the Accrued Benefits through the termination date. The Company will have no further obligation to pay any compensation of any kind (including without limitation any bonus or portion of a bonus that otherwise may have become due and payable to Executive with respect to the year in which such termination date occurs unless he/she remains employed with the Company as of the date bonuses are paid to other senior executives of the Company), or severance payments of any kind.

(g) If the Company determines in its sole discretion that it cannot make the COBRA reimbursements under Section 5(a)(vi) or Section 5(e)(ii) (the "COBRA Reimbursements") without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company will in lieu thereof provide to Executive a taxable monthly payment, payable on the last day of a given month, in an amount equal to the monthly COBRA premium that the Executive would be required to pay to continue the Executive's group health coverage in effect on the termination of employment date (which amount will be based on the premium for the first month of COBRA continuation coverage), which payments will be made regardless of whether the Executive elects COBRA continuation coverage and will commence on the month following the Executive's termination of employment and will end on the earlier of (x) the date upon which the Executive obtains other employment or (y) the date the Company has paid an amount equal to (A) 6 payments if Executive is receiving the Severance Benefits pursuant to Section 5(a) or (B) subject to the Non-duplication Provision, 12 payments if Executive is receiving the Enhanced Severance Benefits pursuant to Section 5(e). For the avoidance of doubt, such taxable payments in lieu of COBRA Reimbursements (the "COBRA Substitute Payments") may be used for any purpose, including, but not limited to continuation coverage under COBRA, and will be subject to all applicable tax withholding.

6. Proprietary Information Obligations.

(a) Proprietary Information and Confidentiality. Both before and during the term of Executive's employment, Executive will have access to and become acquainted with Company confidential and proprietary information (together "Proprietary Information"), including but not limited to information or plans concerning the Company's products and technologies; customer relationships; personnel; sales, marketing and financial operations and methods; trade secrets; formulae and secret developments and inventions; processes; and other compilations of information, records, and specifications. Executive will not disclose any of the Proprietary Information directly or indirectly, or use it in any way, either during his/her employment pursuant to this Agreement or at any time thereafter, except as reasonably required or specifically requested in the course of his/her employment with the Company or as authorized in writing by the Company. Notwithstanding the foregoing, Proprietary Information does not include information that is otherwise publicly known or available, provided it has not become public as a result of a breach of this Agreement or any other agreement Executive has to keep information confidential. It is not a breach of this Agreement for Executive to disclose Proprietary Information (i) pursuant to an order of a court or other governmental or legal body or (ii) in connection with Protected Activity (as defined below). Executive understands that nothing in this Agreement shall in any way limit or prohibit Executive from engaging in any Protected Activity. For purposes of this Agreement, "Protected Activity" means filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board ("Government Agencies"). Executive understands that in connection with such Protected Activity, Executive is permitted to disclose documents or other information as permitted by law, and without giving notice to, or receiving authorization from, the Company. Notwithstanding, in making any such disclosures or communications, Executive agrees to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Proprietary Information to any parties other than the Government Agencies. Executive further understands that "Protected Activity" does not include the disclosure of any Company attorney-client privileged communications. In addition, Executive hereby acknowledges that the Company has provided Executive with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Exhibit B.

(b) Inventions Agreement and Assignment.

(i) Executive hereby agrees to disclose promptly to the Company (or any persons designated by it) all developments, designs, creations, improvements, original works of authorship, formulas, processes, know-how, techniques and/or inventions (collectively, the "Inventions") (A) which are made or conceived or reduced to practice by Executive, either alone or jointly with others, in performing his/her duties during the period of Executive's employment by the Company, that relate to or are useful in the business of the Company; or (B) which result from tasks assigned to Executive by the Company, or from Executive's use of the premises or other resources owned, leased or contracted by the Company.

(ii) Executive agrees that all such Inventions which the Company in its discretion determines to be related to or useful in its business or its research or development, or which result from work performed by Executive for the Company, will be the sole and exclusive property of the Company and its assigns, and the Company and its assigns will have the right to use and/or to apply for patents, copyrights or other statutory or common law protections for such Inventions in any and all countries. Executive further agrees to assist the Company in every reasonable way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights and other statutory or common law protections for such Inventions in any and all countries. To that end, Executive will execute all documents for use in applying for and obtaining such patents, copyrights and other statutory or common law protections therefor and enforcing the same, as the Company may desire, together with any assignments thereof to the Company or to persons or entities designated by the Company. Should the Company be unable to secure Executive's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright or other right or protection relating to any Invention, whether due to his/her mental or physical incapacity or any other cause, Executive hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and in his/her behalf and stead, to execute and file any such document, and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by Executive. Executive's obligations under this Section 6(b)(ii) will continue beyond the termination of Executive's employment with the Company, but the Company will compensate Executive at a reasonable rate after such termination for time actually spent by Executive at the Company's request in providing such assistance.

(iii) Executive hereby acknowledges that all original works of authorship which are made by Executive (solely or jointly with others) within the scope of Executive's employment which are protectable by copyright are "works for hire," as that term is defined in the United States Copyright Act (17 USCA, Section 101).

(iv) Any provision in this Agreement requiring Executive to assign Executive's rights in any Invention to the Company will not apply to any invention that is exempt under the provisions of California Labor Code section 2870, which provides:

> "(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

(c) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he/she will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he/she will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, to the extent permitted under applicable law, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Company; provided, however, that if Executive is or becomes a permanent resident of the state of California and remains such a permanent resident through the date of termination of Executive's employment, this Section 6(c) shall not apply following the termination of Executive's employment with the Company.

(d) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself or on behalf of any other person or entity, solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(e) Company Property and Materials.

(i) All files, records, documents, computer-recorded or electronic information, drawings, specifications, equipment, and similar items relating to Company business, whether prepared by Executive or otherwise coming into his/her possession, will remain the Company's exclusive property and will not be removed from Company premises under any circumstances whatsoever without the Company's prior written consent, except when, and only for the period, necessary to carry out Executive's duties hereunder

(ii) In the event of termination of Executive's employment for any reason, Executive will promptly deliver to the Company all Company equipment (including, without limitation, any cellular phones, beeper/pagers, computer hardware and software, fax machines and other tools of the trade) and all originals and copies of all documents, including without limitation, all books, customer lists, forms, documents supplied by customers, records, product lists, writings, manuals, reports, financial documents and other documents or property in Executive's possession or control, which relate to the Company's business in any way whatsoever, and in particular to customers of the Company, or which may be considered to constitute or contain Proprietary Information as defined above, and Executive will neither retain, reproduce, nor distribute copies thereof (other than copies of Executive's electronic or hardcopy address and telephone contact data base or directories). Notwithstanding the foregoing, Executive shall be allowed to retain a copy of the Employee Handbook and personnel records relating to Executive's employment.

(f) Remedies for Breach. Executive acknowledges that any breach by Executive of this Section 6 would cause the Company irreparable injury and damage for which monetary damages are inadequate. Accordingly, in the event of a breach or a threatened breach of this Section 6, the Company will be entitled to seek an injunction restraining such breach. In addition, in the event of a breach of this Section 6, the Company's obligation to pay any unpaid portion of the Severance Payment or other benefits as set forth in Sections 5(a) and (d) of this Agreement will be extinguished. Nothing contained herein will be construed as prohibiting the Company from pursuing any other remedy available to the Company for such breach or such threatened breach. Executive has carefully read and considered these restrictions and agrees they are fair and reasonable restrictions on Executive and are reasonably required for the protection of the interests of the Company. Executive agrees not to circumvent the spirit of these restrictions by attempting to accomplish indirectly what Executive is otherwise restricted from doing directly. Executive agrees that the restrictions in this Section 6 are reasonable and necessary to protect the Company's Proprietary Information, and they do not prevent Executive from working in the medical device industry. Executive agrees that the covenants and agreements by Executive contained in this Section 6 shall be in addition to any other agreements and covenants Executive may have agreed to in any other employee proprietary information, confidentiality, non-disclosure or other similar agreement and that this Section 6 shall not be deemed to limit such other covenants and agreements, all of which shall continue to survive the termination of this Agreement in accordance with their respective terms. A breach by Executive of the terms of such other agreements and covenants shall be deemed to be a breach by Executive of this Section 6 and of this Agreement. To the extent any of the provisions in this Section 6 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 6 is held to be unenforceable, the remaining provisions of this Section 6 shall be enforced as written.

7. Interpretation, Governing Law and Exclusive Forum. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of California (excluding any that mandate the use of another jurisdiction's laws). Any arbitration (unless otherwise mutually agreed), litigation or similar proceeding with respect to such matters only may be brought within Santa Clara County, California, and all parties to this Agreement consent to California's jurisdiction.

8. Entire Agreement. All oral or written agreements or representations, express or implied, with respect to the subject matter of this Agreement are set forth in this Agreement.

9. Severability. In the event that one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such holding shall not impair the validity, legality or enforceability of the remaining provisions herein.

10. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, Executive and his/her estate, but Executive may not assign or pledge this Agreement or any rights arising under it, except to the extent permitted under the terms of the benefit plans in which he/she participates. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, sale, transfer of stock, consideration or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no succession had taken place. As used in this Agreement, "Company" means the Company as hereinbefore defined and any successor to its business and/or assets (by merger, purchase or otherwise as provided in this Section 10) which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law. In the event that any successor refuses to assume the obligations hereunder, the Company as hereinbefore defined shall remain fully responsible for all obligations hereunder.

11. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by hand delivery, electronic mail, facsimile, telecopy, overnight courier service, or by United States certified or registered mail, return receipt requested. Each such notice, request, demand or other communication shall be effective (i) if delivered by hand or by overnight courier service, when delivered at the address specified in this Section 11; (ii) if given by electronic mail, facsimile or telecopy, when such electronic mail, facsimile or telecopy is transmitted to the electronic mail address or facsimile or telecopy number specified in this Section 11 and confirmation is received if during normal business hours on a business day, and otherwise, on the next business day; and (iii) if given by certified or registered mail, three (3) days after the mailing thereof. Notices shall be addressed to the parties as follows (or at such other address, email address or fax number as either party may from time to time specify in writing by giving notice as provided herein):

If to the Company:
Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attn: General Counsel
Fax No. (408) 789-4205

If to Executive:
Suzanne Winter
Address: most recent on file with the Company
Email: most recent on file with the Company

12. Indemnification. As soon as reasonably practicable after the due execution of this Agreement by each of the parties hereto, the Company and Executive will enter into the Company's standard form of indemnification agreement utilized by the Company for its directors and executive officers unless such an agreement is already in effect.

13. Dispute Resolution. The parties agree that all disputes, claims or controversies between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, including any dispute, claim or controversy arising from or otherwise in connection with this Agreement and/or Executive's employment with the Company, will be resolved as follows:

(a) Prior to initiating any other proceeding, the complaining party will provide the other party with a written statement of the claim identifying any supporting witnesses or documents and the requested relief. The responding party shall within forty-five (45) days furnish a statement of the relief, if any, that it is willing to provide, and identify supporting witnesses or documents.

(b) If the matter is not resolved by the exchange of statements of claim and statements of response as provided herein, the parties shall submit the dispute to non-binding mediation, the cost of the mediator to be paid by the Company, before a mediator and/or service to be jointly selected by the parties. Each party will bear his/her or its own attorney's fees and witness fees.

(c) If the parties cannot agree on a mediator and/or if the matter is not otherwise resolved by mediation, any controversy or claim between Executive and the Company and any of its current or former directors, officers and employees, including any arising out of or relating to this Agreement or breach thereof, shall be settled by final and binding arbitration in the county in which Executive last worked, or elsewhere as mutually agreed by the parties, by a single arbitrator pursuant to the Employment Dispute Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), unless the parties to the dispute agree to another arbitration service or independent arbitrator. The parties may conduct discovery to the extent permitted in a court of law; the arbitrator will render an award together with a written opinion indicating the bases for such opinion; and the arbitrator will have full authority to award all remedies that would be available in court. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall bear its own attorney's fees and costs, unless the claim is based on a statute that provides otherwise. The Company will pay the arbitrator's fees and any administrative charges of the arbitration service, except that if Executive initiates the claim, he/she will pay a portion of the administrative charges equal to the amount he/she would have paid to initiate the claim in a court of general jurisdiction.

(d) EXECUTIVE AND THE COMPANY AGREE THAT THIS ARBITRATION PROCEDURE WILL BE THE EXCLUSIVE MEANS OF REDRESS FOR ANY DISPUTES RELATING TO OR ARISING FROM EXECUTIVE'S EMPLOYMENT WITH THE COMPANY OR TERMINATION THEREFROM, INCLUDING DISPUTES OVER UNPAID WAGES, BREACH OF CONTRACT OR TORT, VIOLATION OF PUBLIC POLICY, RIGHTS PROVIDED BY FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS, ORDINANCES, AND COMMON LAW, LAWS THAT PROHIBIT DISCRIMINATION BASED ON ANY PROTECTED CLASSIFICATION, AND ANY OTHER STATUTES OR LAWS RELATING TO AN EXECUTIVE'S RELATIONSHIP WITH THE COMPANY. THE FOREGOING NOTWITHSTANDING, CLAIMS FOR WORKERS' COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE, OR ANY OTHER CLAIMS WHERE MANDATORY ARBITRATION IS PROHIBITED BY LAW, ARE NOT COVERED BY THIS ARBITRATION PROVISION. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL, AND AGREE THAT THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING ON BOTH PARTIES. THIS ARBITRATION PROVISION IS TO BE CONSTRUED AS BROADLY AS IS PERMISSIBLE UNDER APPLICABLE LAW.

14. Representations. Each person executing this Agreement hereby represents and warrants on behalf of himself/herself and of the entity/individual on whose behalf he/she is executing the Agreement that he/she is authorized to represent and bind the entity/individual on whose behalf he/she is executing the Agreement. Executive specifically represents and warrants to the Company that he/she reasonably believes (a) he/she is not under any contractual or other obligations that would prevent, limit or impair Executive's performance of his/her obligations under this Agreement and (b) that entering into this Agreement will not result in a breach of any other agreement to which he/she is a party. Executive acknowledges that Executive has been given the opportunity to consult with legal counsel and seek such advice and consultation as Executive deems appropriate or necessary.

15. Amendments and Waivers. No provisions of this Agreement may be modified, waived, or discharged except by a written document signed by Executive and a duly authorized Company officer. Thus, for example, promotions, commendations, and/or bonuses shall not, by themselves, modify, amend, or extend this Agreement. A waiver of any conditions or provisions of this Agreement in a given instance shall not be deemed a waiver of such conditions or provisions at any other time.

16. Taxes.

(a) Withholdings. The Company may withhold from any compensation and benefits payable under this Agreement all federal, state, city and other taxes or amounts as shall be determined by the Company to be required to be withheld pursuant to applicable laws, or governmental regulations or rulings. Executive shall be solely responsible for the satisfaction of any taxes (including employment taxes imposed on employees and penalty taxes on nonqualified deferred compensation).

(b) Net Proceeds Maximization. Notwithstanding any provision of this Agreement to the contrary, if all or any portion of the payments or benefits received or realized by Executive pursuant to this Agreement either alone or together with other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company or any of its affiliates ("Potential Parachute Payments") would constitute an "excess parachute payment" within the meaning of section 280G of the Code and/or any corresponding and applicable state law provision, the Potential Parachute Payments will be reduced by reducing the amount of the Potential Parachute Payments to the extent necessary so that no portion of the Potential Parachute Payments will be subject to the excise tax imposed by section 4999 of the Code and any corresponding and/or applicable state law provision. A reduction will be made under the previous sentence only if, by reason of that reduction, Executive's net after tax benefit exceeds the net after tax benefit he/she would realize if the reduction were not made. For purposes of this paragraph, "net after tax benefit" means the sum of (i) the total amount received or realized by Executive pursuant to this Agreement that would constitute a "parachute payment" within the meaning of section 280G of the Code and any corresponding and applicable state law provision, plus (ii) all other payments or benefits that Executive receives or realizes or is then entitled to receive or realize from the Company and any of its affiliates that would constitute a "parachute payment" within the meaning of Section 280G of the Code and any corresponding and applicable state law provision, less (iii) the amount of federal or state income taxes payable with respect to the payments or benefits described in (i) and (ii) above calculated at the maximum marginal individual income tax rate for each year in which payments or benefits are realized by Executive (based upon the rate in effect for that year as set forth in the Code at the time of the first receipt or realization of the foregoing), less (iv) the amount of excise taxes imposed with respect to the payments or benefits described in (i) and (ii) above by section 4999 of the Code and any corresponding and applicable state law provision. All determinations and calculations made in this paragraph shall be made by an independent accounting firm (the "Accounting Firm") selected by the Company prior to the Change in Control and the Company will bear all costs and expenses incurred by the Accounting Firm in connection with its determination. The Accounting Firm shall be a nationally recognized United States public accounting firm which has not, during the two (2) years preceding the date of its selection, acted in any way on behalf of

(x) the Company or any affiliate thereof or (y) Executive. If any payments or benefits are reduced pursuant to this Section 16(b), they shall be reduced in the following order: First all payments and benefits that do not constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code or that are exempt from section 409A of the Code (with the payments or benefits being reduced in reverse order of when they otherwise would be made or provided); second, all payments or benefits that constitute "nonqualified deferred compensation" within the meaning of section 409A of the Code that are not exempt from section 409A of the Code that were granted to Executive in the 12-month period of time preceding the applicable Change in Control, in the order such benefits were granted to Executive; and third, all remaining payments and benefits shall be reduced pro-rata. Notwithstanding the foregoing, if (i) reducing payments or benefits in the order described above would result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), (ii) Executive so notifies the Company before such reductions and payments are made and benefits provided, and (iii) reducing the payments or benefits in another order would not result in the imposition on Executive of an additional tax under section 409A of the Code (or similar state or local law), payments and benefits shall instead be reduced in such other order.

(c) Section 409A Compliance.

(i) With respect to any reimbursement of expenses or any provision of in-kind benefits to Executive specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangements providing for the reimbursement of expenses referred to in section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year following the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) upon or following a termination of employment unless such termination is also a "separation from service" and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." For purposes of section 409A of the Code, the date as of which Company and Executive reasonably anticipate that no further services would be performed by Executive for Company shall be construed as the date that Executive first incurs a "separation from service" as defined under section 409A of the Code.

(iii) Notwithstanding anything in this Agreement to the contrary, if a payment obligation arises on account of Executive's separation from service while Executive is a "specified employee" as described in section 409A of the Code and the Treasury Regulations thereunder and as determined by Company in accordance with its procedures, by which determination Executive is bound, any payment of "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation sections 1.409A-1(b)(3) through (b)(12)) shall be made on the first business day of the seventh month following the date of Executive's separation from service, or, if earlier, within fifteen (15) days after the appointment of the personal representative or executor of Executive's estate following Executive's death together with interest on them for the period of delay at a rate equal to the average prime interest rate published in the Wall Street Journal on any day chosen by the Company during that period. Thereafter, Executive shall receive any remaining payments as if there had not been an earlier delay.

(iv) Notwithstanding anything to the contrary contained in this Agreement, (i) the Executive shall have no legally-enforceable right to, and the Company shall have no obligation to make, any payment or provide any benefit to Executive if having such a right or obligation would result in the imposition of additional taxes under section 409A of the Code, and (ii) any provision that would cause any payment or benefit to fail to satisfy section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by section 409A and may be accomplished by the Company without the Executive's consent). If any payment is not made or any benefit is not provided under the terms of this Section 16(c)(iv), it is the Company's present intention to make a similar payment or provide a similar benefit to the Executive in a manner that will not result in the imposition of additional taxes under section 409A of the Code, to the extent feasible. Each payment made under this Agreement is intended to be a separate payment for the purposes of section 409A of the Code.

(v) The Company does not guarantee any particular tax effect to Executive under this Agreement. Company shall not be liable to Executive for any payment made under this Agreement that is determined to result in an additional tax, penalty or interest under section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under section 409A of the Code. The parties intend this Agreement to be exempt from, or comply with, the requirements of Section 409A of the Code and the final regulations and any guidance promulgated thereunder so that none of the payments and benefits to be provided hereunder will be subject to the additional tax imposed by Section 409A. Any ambiguities or ambiguous terms shall be interpreted to so be exempt or comply, and this Agreement shall be administered in accordance with such intent.

17. U.S. Citizenship and Immigration Services; Confidentiality and Inventions Agreement. Executive agrees to timely file all documents required by the Department of Homeland Security to verify his/her identity and lawful employment in the United States. In addition, as a condition to Executive's employment with the Company, Executive is required to complete, sign, return, and abide by the Company's Employee Confidentiality and Inventions Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute the same instrument.

19. Resignation from Positions. Upon Executive's cessation of employment with the Company for any reason, Executive agrees that Executive shall be deemed to have resigned as an officer and as a director (if applicable) from the Company and every subsidiary of the Company on which Executive is then serving as an officer or director, and from any other entity or company on which Executive is then serving as a director or officer at the request of the Company, in each case effective as of the date of Executive's cessation of employment. In the event of Executive's cessation of employment, Executive agrees to execute a general resignation resigning from all positions then held by Executive on every subsidiary of the Company and other entity or company on which Executive is then serving as a director or officer at the request of the Company. Executive hereby grants the corporate secretary of the Company an irrevocable power of attorney to execute on behalf of Executive all such resignations, documents and instruments and to take all such other actions as reasonably necessary to carry out the intention of this Section 19.

20. Executive's Commencement of Employment. It is a condition precedent to the effectiveness of this Agreement that Executive commences working full-time for the Company at the Company's principal executive offices on the Effective Date. If Executive does not commence such full-time employment on the Effective Date, then this Agreement shall be null and void and the Company shall have no obligations hereunder or otherwise to Executive.

21. Executive's Acknowledgement.

EXECUTIVE ACKNOWLEDGES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND HIM/HER RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS) AND THAT HE/SHE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

EXECUTIVE FURTHER ACKNOWLEDGES THAT HE/SHE HAS CAREFULLY READ THIS AGREEMENT (INCLUDING THE AGREEMENTS SET FORTH AS EXHIBITS), THAT HE/SHE UNDERSTANDS ALL OF SUCH AGREEMENTS, AND THAT HE/SHE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS SUCH AGREEMENTS WITH HIS/HER PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF/HERSELF OF THAT OPPORTUNITY TO THE EXTENT HE/SHE WISHED TO DO SO. EXECUTIVE UNDERSTANDS THAT THE DISPUTE RESOLUTION PROVISIONS OF THIS AGREEMENT GIVE UP THE RIGHT TO A JURY TRIAL ON MATTERS COVERED BY THEM.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ACCURAY INCORPORATED,
a Delaware Corporation

By: /s/ Joshua Levine
Name: Joshua Levine
Title: President & Chief Executive Officer

By: /s/ Jesse Chew
Name: Jesse Chew
Title: Senior Vice President, General Counsel

Accepted and Agreed,

Suzanne Winter: /s/ Suzanne Winter

Signed on: 6/22/21

Exhibit A

FORM OF SEPARATION AGREEMENT AND GENERAL RELEASE

[See attached]

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is hereby entered into by and between _____, an individual ("Executive"), and Accuray Incorporated, a Delaware corporation, on behalf of itself and all of its subsidiaries (collectively, the "Company").

Recitals

A. Executive has been employed by the Company pursuant to an employment agreement by and between the Company and Executive effective as of [DATE] (the "Employment Agreement"), and currently is serving as **[specify position held at time of termination]**;

B. Executive's employment with the Company and any of its parents, direct or indirect subsidiaries, affiliates, divisions, or related entities (collectively referred to herein as the "Company and its Related Entities") will be ended on the terms and conditions set forth in this Agreement.

Agreement

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Effective Date. Except as otherwise provided herein, this Agreement shall be effective on the eighth day after it has been executed by both of the parties (the "Effective Date").

2. End of Employment and Service as a Director. Executive's employment with the Company and its Related Entities has ended or will end effective as of _____ Pacific Time, on _____ (the "Termination Date"). If Executive is an officer or a member of the Board of Directors of the Company and/or its Related Entities (the "Board") Executive hereby voluntarily resigns from any such officer positions and the Board, effective _____.

3. Continuation of Benefits After the Termination Date. Except as expressly provided in this Agreement or in the plan documents governing the Company's employee benefit plans, after the Termination Date, Executive will no longer be eligible for, receive, accrue, or participate in any other benefits or benefit plans provided by the Company and its Related Entities, including, without limitation, medical, dental and life insurance benefits, and the Company's 401(k) retirement plan; provided, however, that nothing in this Agreement shall waive Executive's right to any vested benefits, including vested amounts in the Company's 401(k) retirement plan, which amounts shall be handled as provided in the plan.

4. Payments Upon Termination. Executive will be entitled to receive payment of the following: (i) all earned but unpaid compensation (including accrued unpaid vacation) through the effective date of termination, payable on or before the termination date; and (ii) reimbursement, made in accordance with Section 4(e) of the Employment Agreement, of any monies advanced or incurred by Executive in connection with his/her employment for reasonable and necessary Company-related expenses incurred on or before the Termination Date. The provisions of this Agreement shall not waive or terminate any rights to compensation or vested benefits under the Company's benefits plans or as required by law, or to indemnification Executive may have under the Company's Certificate of Incorporation, Bylaws or separate indemnification agreement, as applicable.

5. Severance Benefits or Enhanced Severance Benefits. In return for Executive's promises in this Agreement, the Company will provide Executive with the Severance Benefits or Enhanced Severance Benefits as defined in Sections 5(a) and 5(e) of the Employment Agreement and as applicable based on the nature of the termination, subject to the terms and conditions set forth in the Employment Agreement, including, but not limited to, Section 16 thereof. The Severance Benefits or Enhanced Severance Benefits will be paid as specified in Section 5(a) or Section 5(e) of the Employment Agreement, as applicable and shall be subject to required withholdings and authorized deductions and to Section 21 below.

6. Effect of Revocation or Subsequent Employment.

(a) If Executive properly revokes this Agreement in accordance with Section 13 below, Executive shall not be entitled to receive the payments and benefits under Section 5, above, except that Executive's rights under COBRA will continue (but not, for purposes of clarity, the right to be reimbursed for COBRA premiums or receive any COBRA Substitute Payments (as defined in the Employment Agreement)).

(b) The Company's obligation to reimburse premiums for insurance coverage under COBRA or otherwise will be extinguished as of the date Executive's coverage begins under the group health plan of any new employer or would have begun had Executive elected to participate in any such group health plan. If Executive violates the restrictions in Section 17, below, the Company's obligation to pay premiums for insurance under COBRA or otherwise will be immediately extinguished, and the other remedies specified in Section 17, below, shall apply.

7. Acknowledgement of Total Compensation and Indebtedness. Executive acknowledges and agrees that the cash payments under Sections 4 and 5 of this Agreement extinguish any and all obligations for monies, or other compensation or benefits that Executive claims or could claim to have earned or claims or could claim is owed to him/her as a result of his/her employment by the Company and its Related Entities through the Termination Date, under the Employment Agreement or otherwise. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this Section 7 shall not terminate any rights Executive has under Section 3 of this Agreement or to other payments Executive may have, and to any indemnification Executive may have under the Company's Bylaws or separate indemnification agreement, as applicable.

8. Status of Related Agreements and Future Employment.

(a) Agreements Between Executive and the Company. [**Agreements to be scheduled at time**].

(b) Employment Agreement. The parties agree that the Employment Agreement shall be terminated as of the Termination Date. Notwithstanding the termination of the Employment Agreement, the parties hereto acknowledge that certain rights and obligations set forth in the Employment Agreement extend beyond the Termination Date. In the event that any provision of this Agreement conflicts with Section 6 of the Employment Agreement, the terms and provisions of the section(s) providing the greatest protection to the Company and its Related Entities shall control.

9. Release by Executive.

(a) Except for any obligations or covenants of the Company pursuant to this Agreement and as otherwise expressly provided in this Agreement, Executive, for himself/herself and his/her heirs, executors, administrators, assigns, successors and agents (collectively, the "Executive's Affiliates") hereby fully and without limitation releases and forever discharges the Company and its Related Entities, and each of their respective agents, representatives, stockholders, owners, officers, directors, employees, consultants, attorneys, auditors, accountants, investigators, affiliates, successors and assigns (collectively, the "Company Releasees"), both individually and collectively, from any and all waivable rights, claims, demands, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of whatever nature whatsoever, known or unknown, fixed or contingent, which Executive or any of Executive's Affiliates has or may have or may claim to have against the Company Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the Effective Date ("Claims"), arising out of, based upon, or relating to his/her employment or the termination of his/her employment with the Company and its Related Entities and/or his/her service as an officer of any of the Company Releasees, any agreement or compensation arrangement between Executive and any of the Company Releasees, to the maximum extent permitted by law.

(b) Executive specifically and expressly releases any Claims arising out of or based on: the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act and the Equal Pay Act, as the same may be amended from time to time; the California common law on fraud, misrepresentation, negligence, defamation, infliction of emotional distress or other tort, breach of contract or covenant, violation of public policy or wrongful termination; state or federal wage and hour laws, and other provisions of the California Labor Code, to the extent these may be released herein as a matter of law; or any other state or federal law, rule, or regulation dealing with the employment relationship, except those claims which may not be released herein as a matter of law.

(c) Nothing contained in this Section 9 or any other provision of this Agreement shall release or waive any right that Executive has to indemnification and/or reimbursement of expenses by the Company and its Related Entities with respect to which Executive may be eligible as provided in California Labor Code section 2802, the Company's and its Related Entities' Certificates of Incorporation, Bylaws and any applicable directors and officers, errors & omissions, umbrella or general liability insurance policies, any indemnification agreements, including the Employment Agreement; or any other applicable source, nor prevent Executive from cooperating in an investigation of the Company by the Equal Employment Opportunity Commission ("EEOC")**.**

10. Waiver of Civil Code Section 1542.

(a) Executive understands and agrees that the release provided herein extends to all Claims released above whether known or unknown, suspected or unsuspected, which may be released as a matter of law. Executive expressly waives and relinquishes any and all rights he/she may have under 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

(b) Executive expressly waives and releases any rights and benefits which he/she has or may have under any similar law or rule of any other jurisdiction. It is the intention of each party through this Agreement to fully, finally and forever settle and release the Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery of any additional Claims or facts relating thereto.

11. [If Executive is age 40 or over on Termination Date] Release of Federal Age Discrimination Claims by Executive. Executive hereby knowingly and voluntarily waives and releases all rights and claims, known or unknown, arising under the Age Discrimination In Employment Act of 1967, as amended, which he/she might otherwise have had against the Company or any of the Company Releasees regarding any actions which occurred prior to the date that Executive signed this Agreement, except that Executive is not prevented from cooperating in an investigation by the EEOC or from filing an EEOC charge other than for personal relief.

12. Release by Company and its Related Entities. The Company and its Related Entities hereby release and forever discharge Executive, from any and all waivable actions, causes of action, covenants, contracts, claims and demands of whatever character, nature and kind, whether known or unknown, which the Company and its Related Entities ever had, now have, or any of them hereafter can, shall or may have by reason of Executive's employment and/or his/her service as a director and/or officer of the Company and/or its Related Entities; provided, however, that this general release shall not apply, or be deemed or construed to apply, to (a) any of Executive's continuing obligations pursuant to this Agreement or the Employment Agreement, (b) criminal conduct or acts or omissions constituting willful misconduct or gross negligence by Executive during his/her employment with the Company, or (c) recoupment of all or a portion of any previously awarded bonus or equity award pursuant to the Company's Recoupment (Clawback) Policy that was in effect when the bonus was paid or the equity award vested or was exercised by Executive, whichever was later.

13. [If Executive is age 40 or over on Termination Date] Review and Revocation Rights. Executive hereby is advised of the following:

(a) Executive has the right to consult with an attorney before signing this Agreement and is encouraged by the Company to do so;

(b) Executive has twenty-one (21) days from his/her receipt of this Agreement to consider it; and

(c) Executive has seven (7) days after signing this Agreement to revoke this Agreement, and this Agreement will not be effective until that revocation period has expired without revocation. Executive agrees that in order to exercise his/her right to revoke this Agreement within such seven (7) day period, he/she must do so in a signed writing delivered to the Company's Board before the close of business on the seventh calendar day after he/she signs this Agreement.

14. Confidentiality of Agreement. After the execution of this Agreement by Executive, neither Executive, his/her attorney, nor any person acting by, through, under or in concert with them, shall disclose any of the terms of or amount paid under this Agreement (other than to state that the Company has filed this Agreement and/or agreements related thereto as public documents) or the negotiation thereof to any individual or entity; provided, however, that the foregoing shall not prevent such disclosures by Executive to his/her attorney, tax advisors and/or immediate family members, as may be required by law, or in connection with Protected Activity (as defined in the Employment Agreement).

15. **No Filings.** Executive represents that he/she has not filed any lawsuits, claims, charges or complaints, which are pending as of the date hereof, against the Company Releasees with any local, state or federal agency or court from the beginning of time to the date of execution of this Agreement, and that Executive is not aware of any facts that would support any Claims or any compliance-related or code of ethics violations of any kind whatsoever against the Company Releasees, including without limitation any claims for any work-related injuries. If Executive hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the Claims released in this Agreement, or in any manner asserts against the Company Releasees any of the Claims released in this Agreement, then Executive agrees to pay to the Company Releasees against whom such Claim(s) is asserted, in addition to any other damages caused thereby, all attorneys' fees incurred by the Company Releasees in defending or otherwise responding to the suit or Claim; provided, however, that this provision shall not obligate Executive to pay the Company Releasees' attorneys' fees in any action challenging the release of claims under the Older Workers Benefit Protection Act or the ADEA, unless otherwise allowed by law. If any governmental agency or court ever assumes jurisdiction over any such lawsuit, claim, charge or complaint and/or purports to bring any legal proceeding, in whole or in part, on behalf of Executive based upon events occurring prior to the execution of this Agreement, Executive will request such agency or court to withdraw from and/or to dismiss the lawsuit, claim, charge or complaint with prejudice.

16. **Confidential and Proprietary Information.** Executive acknowledges that certain information, observations and data obtained by him/her during the course of or related to his/her employment with the Company and its Related Entities (including, without limitation, projection programs, business plans, business matrix programs (*i.e.*, measurement of business), strategic financial projections, certain financial information, shareholder information, technology and product design information, marketing plans or proposals, personnel information, customer lists and other customer information) are the sole property of the Company and its Related Entities and constitute Proprietary Information as defined in Section 6 of the Employment Agreement. Executive represents and warrants that he/she has returned all files, customer lists, financial information and other property of the Company and its Related Entities that were in Executive's possession or control without retaining copies thereof (other than a copy of the Employee Handbook and personnel records relating to Executive's employment). Executive further represents and warrants that he/she does not have in his/her possession or control any files, customer lists, financial information or other property of the Company and its Related Entities. In addition to his/her promises in Section 6 of the Employment Agreement, Executive agrees that he/she will not disclose to any person or use any such information, observations or data without the written consent of the Board. If Executive is served with a deposition subpoena or other legal process calling for the disclosure of such information, or if he/she is contacted by any third person requesting such information, he/she will notify the Board as soon as is reasonably practicable after receiving notice and will reasonably cooperate with the Company and its Related Entities in minimizing the disclosure thereof; provided, that nothing in this Agreement will (i) affect Executive's obligations to testify truthfully in response to any subpoena or other legally required discovery proceeding or (ii) in any way limit or prohibit Executive from engaging in Protected Activity.

17. **Prohibited Activities.**

(a) Non-Solicitation of Customers and Other Business Partners. Executive recognizes that by virtue of his/her employment with the Company, he/she will be introduced to and involved in the solicitation and servicing of existing customers and other business partners of the Company and new customers and business partners obtained by the Company during his/her employment. Executive understands and agrees that all efforts expended in soliciting and servicing such customers and business partners shall be for the benefit of the Company. Executive further agrees that during his/her employment with the Company he/she will not engage in any conduct which could in any way jeopardize or disturb any of the customer and business partner relationships of the Company. In addition, to the extent permitted

under applicable law, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information to, directly or indirectly, solicit, direct, interfere with, or entice away from the Company any existing customer, licensee, licensor, vendor, contractor or distributor of the Company or for the customer or other business partner to expand its business with a competitor, without the prior written consent of the Board.

(b) Non-Solicitation of Employees. Executive recognizes the substantial expenditure of time and effort which the Company devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, Executive agrees that, for a period beginning on the Effective Date and ending twelve (12) months after termination of Executive's employment with the Company, regardless of the reason for such termination, Executive shall not use any Proprietary Information, directly or indirectly, for himself/herself or on behalf of any other person or entity, to solicit, offer employment to, hire or otherwise retain the services of any employee of the Company in a position classified as exempt from overtime pay requirements. For purposes of the foregoing, "employee of the Company" shall include any person who was an employee of the Company at any time within six (6) months prior to the prohibited conduct.

(c) Scope of Restrictions. Executive agrees that the restrictions in Sections 17 (a) and (b), above, are reasonable and necessary to protect the Company's trade secrets and that they do not foreclose Executive from working in the medical device industry generally. To the extent that any of the provisions in this Section 17 are held to be overly broad or otherwise unenforceable at the time enforcement is sought, Executive agrees that the provision shall be reformed and enforced to the greatest extent permissible by law. Executive further agrees that if any portion of this Section 17 is held to be unenforceable, that the remaining provisions of it shall be enforced as written.

18. Remedies. Executive acknowledges that any misuse of Proprietary Information belonging to the Company and its Related Entities, or any violation of Section 6 of the Employment Agreement, and any violation of Sections 14, 16 and 17 of this Agreement, will result in irreparable harm to the Company and its Related Entities, and therefore, the Company and its Related Entities shall, in addition to any other remedies, be entitled to immediate injunctive relief. To the extent there is any conflict between Section 6 of the Employment Agreement and this Section 18, the provision providing the greatest protection to the Company and its Related Entities shall control. In addition, in the event of a breach of any provision of this Agreement by Executive, including Sections 14, 16 and 17, Executive shall forfeit, and the Company and its Related Entities may withhold payment of any unpaid portion of, the Severance Benefits or Enhanced Severance Benefits provided under Section 5, above.

19. Cooperation Clause.

(a) To facilitate the orderly conduct of the Company and its Related Entities' businesses, for the twelve (12)-month period following the Effective Date, Executive agrees to cooperate, at no charge, with the Company and its Related Entities' reasonable requests for information or assistance related to the time of his/her employment.

(b) For the twelve (12)-month period following the Effective Date, Executive agrees to cooperate, at no charge, with the Company's and its Related Entities' and its or their counsel's reasonable requests for information or assistance related to (i) any investigations (including internal investigations) and audits of the Company's and its Related Entities' management's current and past conduct and business and accounting practices and (ii) the Company's and its Related Entities' defense of, or other participation in, any administrative, judicial, or other proceeding arising from any charge, complaint or other action which has been or may be filed relating to the period during which Executive was employed by the

Company and its Related Entities. The Company will promptly reimburse Executive for his/her reasonable, customary and documented out-of-pocket business expenses in connection with the performance of his/her duties under this Section 19. Except as required by law or authorized in advance by the Board of Directors of the Company, Executive will not communicate, directly or indirectly, with any third party other than Executive's legal counsel, including any person or representative of any group of people or entity who is suing or has indicated that a legal action against the Company and its Related Entities or any of their directors or officers is being contemplated, concerning the management or governance of the Company and its Related Entities, the operations of the Company and its Related Entities, the legal positions taken by the Company and its Related Entities, or the financial status of the Company and its Related Entities. If asked about any such individuals or matters, Executive shall say: "I have no comment," and shall direct the inquirer to the Company. Executive acknowledges that any violation of this Section 19 will result in irreparable harm to the Company and its Related Entities and will give rise to an immediate action by the Company and its Related Entities for injunctive relief.

20. **No Future Employment.** Executive understands that his/her employment with the Company and its Related Entities will irrevocably end as of the Termination Date and will not be resumed at any time in the future. Executive agrees that he/she will not apply for, seek or accept employment by the Company and its Related Entities at any time, unless invited to do so by the Company and its Related Entities.

21. **Tax Issues.** The parties agree that the payments and benefits provided under this Agreement, and all other contracts, arrangements or programs that apply to him/her, shall be subject to Section 16 of the Employment Agreement.

22. **Non-disparagement**. Executive agrees not to criticize, denigrate, or otherwise disparage the Company and its Related Entities, or any of their directors, officers, products, processes, experiments, policies, practices, standards of business conduct, or areas or techniques of research. The Company agrees not to authorize or condone denigrating or disparaging statements about Executive to any third party, including by press release or other formally released announcement. Factually accurate statements in legal or public filings shall not violate this provision. In addition, nothing in this Section 22 shall prohibit Executive or the Company or the Board, or any of their employees or members from complying with any lawful subpoena or court order or taking any other actions affirmatively authorized by law.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflict of laws.

24. **Dispute Resolution.** The parties hereby agree that all disputes, claims or controversies arising from or otherwise in connection with this Agreement (except for injunctive relief sought by either party) between them and between Executive and any of the Company's affiliated entities and the successor of all such entities, and any director, stockholder or employee of the Company will be resolved in accordance with Section 13 of the Employment Agreement, except for its attorneys' fee provision.

25. **Attorneys' Fees.** Except as otherwise provided herein, in any action, litigation or proceeding between the parties arising out of or in relation to this Agreement, including any purported breach of this Agreement, the prevailing party shall be entitled to an award of its costs and expenses, including reasonable attorneys' fees.

26. **Non-Admission of Liability.** The parties understand and agree that neither the payment of any sum of money nor the execution of this Agreement by the parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by any party.

27. **Severability.** If any one or more of the provisions contained herein (or parts thereof), or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof will not be in any way impaired or affected, it being intended that all of the rights and privileges shall be enforceable to the fullest extent permitted by law.

28. **Entire Agreement.** This Agreement represents the sole and entire agreement among the parties and, except as expressly stated herein, supersedes all prior agreements, negotiations and discussions among the parties with respect to the subject matters contained herein.

29. **Waiver.** No waiver by any party hereto at any time of any breach of, or compliance with, any condition or provision of this Agreement to be performed by any other party hereto may be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time**.**

30. **Amendment.** This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by duly authorized representatives of the parties hereto, which writing expressly states the intent of the parties to modify this Agreement.

31. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original as against any party that has signed it, but both of which together will constitute one and the same instrument.

32. **Assignment.** This Agreement inures to the benefit of and is binding upon the Company and its successors and assigns, but Executive's rights under this Agreement are not assignable, except to his/her estate**.**

33. **Notice.** All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) if personally delivered or delivered by overnight courier; (b) if sent by electronic mail, telecopy or facsimile (except for legal process); or (c) if mailed by overnight or by first class, United States certified or registered mail, postage prepaid, return receipt requested, and properly addressed as follows:

If to the Company: Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089
Attn: Board of Directors
c/o Corporate Secretary
Fax No. (408) 789-4205

If to Executive: Address: most recent on file with the Company
Email: most recent on file with the Company

Such addresses may be changed, from time to time, by means of a notice given in the manner provided above. Notice will conclusively be deemed to have been given when personally delivered (including, but not limited to, by messenger or courier); or if given by mail, on the third business day after being sent by first class, United States certified or registered mail; or if given by Federal Express or other similar overnight service, on the date of delivery; or if given by electronic mail, telecopy or facsimile

machine during normal business hours on a business day, when confirmation of transmission is indicated by the sender's machine; or if given by electronic mail, telecopy or facsimile machine at any time other than during normal business hours on a business day, the first business day following when confirmation of transmission is indicated by the sender's machine. Unless otherwise agreed, notices, requests, demands and other communications delivered to legal counsel of any party hereto, whether or not such counsel shall consist of in-house or outside counsel, shall not constitute duly given notice to any party hereto.

34. Miscellaneous Provisions.

(a) The parties represent that they have read this Agreement and fully understand all of its terms; that they have conferred with their attorneys, or have knowingly and voluntarily chosen not to confer with their attorneys about this Agreement; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights that they have or may have, and they are signing this Agreement with full knowledge of any such rights.

(b) Both parties have participated in the drafting of this Agreement with the assistance of counsel to the extent they desired. The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party. Whenever the context requires, all words used in the singular must be construed to have been used in the plural, and vice versa, and each gender must include any other gender. The captions of the Sections of this Agreement are for convenience only and must not affect the construction or interpretation of any of the provision herein.

(c) Each provision of this Agreement to be performed by a party hereto is both a covenant and condition, and is a material consideration for the other party's performance hereunder, and any breach thereof by the party will be a material default hereunder. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement are cumulative and no one of them is exclusive of any other. Time is of the essence in the performance of this Agreement.

(d) Each party acknowledges that no representation, statement or promise made by any other party, or by the agent or attorney of any other party, except for those in this Agreement, has been relied on by him/her or it in entering into this Agreement.

(e) Unless expressly set forth otherwise, all references herein to a "day" are deemed to be a reference to a calendar day. All references to "business day" mean any day of the year other than a Saturday, Sunday or a public or bank holiday in Orange County, California. Unless expressly stated otherwise, cross-references herein refer to provisions within this Agreement and are not references to any other document.

(f) Each party to this Agreement will cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

EACH OF THE PARTIES ACKNOWLEDGES THAT HE/SHE/IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT, AND THAT IT INCLUDES A WAIVER OF THE RIGHT TO A TRIAL BY JURY, AND, WITH RESPECT TO EXECUTIVE, HE/SHE UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

(*Signature page follows*)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

EXECUTIVE: _____

Date: _____

COMPANY: Accuray Incorporated

By: _____
Name: _____
Title: _____

Date: _____

Exhibit B

SECTION 7 OF THE DEFEND TRADE SECRETS ACT OF 2016

" . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order."

Exhibit 10.56

SENIOR SECURED CREDIT FACILITIES

CREDIT AGREEMENT

dated as of May 6, 2021,

among

ACCURAY INCORPORATED,
as the Borrower,

THE SEVERAL LENDERS FROM TIME TO TIME PARTY HERETO,

and

SILICON VALLEY BANK,
as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender

Table of Contents

SCHEDULES

EXHIBITS

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "***Agreement***"), dated as of May 6, 2021, is entered into by and among **ACCURAY INCORPORATED**, a Delaware corporation (the "***Borrower***"), the several banks and other financial institutions or entities from time to time party to this Agreement (each a "***Lender***" and, collectively, the "***Lenders***"), **SILICON VALLEY BANK** ("***SVB***"), as the Issuing Lender and the Swingline Lender, and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, together with any successors and assigns in such capacities, the "***Administrative Agent***").

RECITALS:

WHEREAS, the Borrower desires to obtain financing to refinance (x) the Existing Credit Facilities (as defined below) and (y) a substantial portion of the Borrower's 3.75% Convertible Senior Notes due July 15, 2022 (the "***2022 Notes***" (which term shall include any permitted refinancing thereof)), as well as for working capital financing, letter of credit facilities and other general corporate purposes;

WHEREAS, the Lenders have agreed to extend certain credit facilities to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate principal amount not to exceed $120,000,000, consisting of a term loan facility in the aggregate principal amount of $80,000,000, and a revolving loan facility in an aggregate principal amount of up to $40,000,000, including a letter of credit sub-facility in the aggregate availability amount of $5,000,000 (as a sublimit of the revolving loan facility); and a swingline sub-facility in the aggregate availability amount of $5,000,000 (as a sublimit of the revolving loan facility);

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien on substantially all of its assets; and

WHEREAS, each of the Guarantors has agreed to guarantee the Obligations of the Borrower and to secure its respective Obligations in respect of such guarantee by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien on substantially all of its assets.

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1
DEFINITIONS

1.1 Defined Terms. As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"***2022 Notes***": as defined in the Recitals hereto.

"***2026 Notes***": the 3.75% convertible senior notes due June 1, 2026, issued pursuant to the indenture, to be dated on or about the Closing Date, between the Borrower and The Bank of New York Mellon Trust Company, N.A., as trustee, in an original principal amount of $100,000,000.

"***ABR***": for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect for such day plus 0.50% or (c) the Eurodollar Rate plus 1%. Any change in the ABR due to a change in any of the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate, as the case may be, shall be effective as of the opening of business on the effective day of the change in such rates.

"***ABR Loans***": Loans, the rate of interest applicable to which is based upon the ABR.

"***Administrative Agent***": SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

"***Affected Financial Institution***": (a) any EEA Financial Institution or (b) any UK Financial Institution.

"***Affected Lender***": as defined in Section 2.23.

"***Affiliate***": with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

"***Agent Parties***": as defined in Section 10.2(c)(ii).

"***Aggregate Exposure***": with respect to any Lender at any time, an amount equal to the sum of (a) without duplication of clause (b), the aggregate then unpaid principal amount of such Lender's Term Loans, (b) without duplication of clause (a), the aggregate amount of such Lender's Term Commitments then in effect, (c) the amount of such Lender's Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender's Revolving Extensions of Credit then outstanding, and (d) without duplication of clause (b), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

"***Aggregate Exposure Percentage***": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

"***Agreement***": as defined in the preamble hereto.

"***Agreement Currency***": as defined in Section 10.19.

"***Applicable Margin***": initially, the rates per annum corresponding to Level II in the tables below; provided that commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the fiscal quarter of the Borrower and its Subsidiaries ending June 30, 2021, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), "***Applicable Margin***" shall mean the rate per annum set forth under the relevant column heading below:

TERM LOANS AND REVOLVING LOANS

Level	Consolidated Senior Net Leverage Ratio	Eurodollar Loans	ABR Loans/Swingline Loans	Commitment Fee Rate
I	≥3.00: 1.00	3.25%	2.25%	0.40%
II	≥ 2.00:1.00 but < 3.00:1.00	3.00%	2.00%	0.35%
III	≥1.00:1.00 but < 2.00:1.00	2.75%	1.75%	0.30%
IV	<1.00:1.00	2.50%	1.50%	0.25%

Notwithstanding the foregoing, (a) if the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of the Borrower, the Applicable Margin shall be the rates corresponding to Level I in the foregoing tables until such financial statements and Compliance Certificate are delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines that (x) the Consolidated Senior Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Senior Net Leverage Ratio would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Senior Net Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Senior Net Leverage Ratio would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

"***Application***": an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

"***Approved Fund***": any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"***Asset Sale***": any Disposition of property or series of related Dispositions of property (excluding any such Disposition of property permitted by clauses (a) through (l) and (o) through (q) of Section 7.5) that yields gross proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of $5,000,000.

"***Assignment and Assumption***": an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"***Available Revolving Commitment***": at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time, minus (b) the aggregate undrawn amount of all outstanding Letters of Credit at such time, minus (c) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, minus (d) the aggregate principal balance of any Revolving Loans outstanding at such time.

"***Available Tenor***": as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of Interest Period pursuant to Section 2.17(b)(iv).

"***Bail-In Action***": the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"***Bail-In Legislation***": (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other Insolvency Proceedings).

"***Bankruptcy Code***": Title 11 of the United States Code entitled "Bankruptcy."

"***Benchmark***": initially, the Eurodollar Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the Eurodollar Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17(b)(i).

"***Benchmark Replacement***": (a) for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(i) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(ii) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(iii) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (i), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion.

(b) With respect to any Term SOFR Transition Event, the sum of: (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment. If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"***Benchmark Replacement Adjustment***": with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(a) for purposes of clauses (a)(i) and (ii) or (b) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(i) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(ii) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(b) for purposes of clause (a)(iii) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar denominated syndicated credit facilities;

provided that, in the case of clause (a) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

"***Benchmark Replacement Conforming Changes***": with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect

the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"***Benchmark Replacement Date***": the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein;

(c) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 2.17(b)(i)(B); or

(d) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m., New York City time, on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the Benchmark Replacement Date will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"***Benchmark Transition Event***": the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an

insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a Benchmark Transition Event will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"***Benchmark Unavailability Period***": the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled "Benchmark Replacement Setting" and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b).

Benefit Plan": any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"***Benefitted Lender***": as defined in Section 10.7(a).

"***Blocked Person***": as defined in Section 7.23.

"***Board***": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"***Borrower***": as defined in the preamble hereto.

"***Borrowing Date***": any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

"***Business***": as defined in Section 4.17(b).

"***Business Day***": a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York or the State of California are authorized or required by law to close; provided that with respect to notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

"***Capital Expenditures***": for any period, the aggregate of all expenditures during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property or equipment" or similar items reflected in the financial statements of the Borrower and its consolidated Subsidiaries for such period.

"***Capital Lease Obligations***": as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP; provided, that for all purposes hereunder, any obligations of such Person that would have been treated as operating leases in accordance with Accounting Standards Codification 840 (regardless of whether or not then in effect) shall be treated as operating leases for purposes of all financial definitions, calculations and covenants, without giving effect to Accounting Standards Codification 842 requiring operating leases to be recharacterized or treated as capital leases.

"***Capital Stock***": with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination. For purposes of clarification, Convertible Indebtedness (including, but not limited to, Permitted Convertible Indebtedness) shall not constitute Capital Stock.

"***Cash Collateralize***": to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other reasonably satisfactory credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Lender; (b) unless otherwise waived (or reduced by) the applicable Cash Management Bank, with respect to Obligations arising under any Cash Management Agreement in connection with Cash Management Services, the applicable Cash Management Bank, for its own or any of its applicable Affiliate's benefit, as provider of such Cash Management Services, cash or deposit account balances having an aggregate value of 103% of the aggregate Obligations arising under such Cash Management Agreement evidencing such Cash Management Services or, if the applicable Cash Management Bank shall agree in its sole discretion, other reasonably satisfactory credit support, in each case pursuant to documentation in form and substance satisfactory to such Cash Management Bank; or (c) unless otherwise waived by the applicable Qualified Counterparty with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or deposit account balances or, if such Qualified Counterparty shall agree in its sole discretion, other reasonably satisfactory credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. "***Cash Collateral***" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"***Cash Equivalents***": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of

deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of one year or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six (6) months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000; (i) in the case of any Group Member organized or having its principal place of business outside the United States, investments denominated in the currency of the jurisdiction in which such Group member is organized or has its principal place of business which are similar and of comparable credit quality to the items specified in clauses (b) through (i) above; or (j) investments permitted by the Borrower's board-approved investment policy as in effect on the Effective Date or as otherwise modified with the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld).

"***Cash Management Agreement***": as defined in the definition of "Cash Management Services."

"***Cash Management Bank***": any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"***Cash Management Services***": cash management and other services provided to one or more of the Group Members by a Cash Management Bank which may include treasury, depository, return items, netting, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system), merchant services, direct deposit of payroll, employee credit card programs, business credit card (including so-called "purchase cards", "procurement cards" or "p-cards"), credit card processing services, debit cards, stored value cards, check cashing services identified in such Cash Management Bank's various cash management services or other similar agreements (each, a "***Cash Management Agreement***").

"***Casualty Event***": any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

"***Certificated Securities***": as defined in Section 4.19(a).

"***Change of Control***": (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 35% or more of the ordinary voting power for the election of

directors of the Borrower (determined on a fully diluted basis); (b) at any time except as permitted pursuant to Sections 7.4 (other than Section 7.4(b)(i)(B)) and 7.5 (other than Section 7.5(d)(iii)), Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each other Loan Party free and clear of all Liens other than Liens permitted by Section 7.3 (except as a result of any disposition, liquidation or merger permitted hereunder; or (c) a "change of control," "fundamental change" or any comparable term or similar event under any agreement governing Permitted Convertible Indebtedness or any other Indebtedness of the Group Members in an aggregate principal amount in excess of $5,000,000, in each case that permits the holder of such Indebtedness to require repayment, redemption, purchase, retirement, defeasance, sinking fund, settlement, conversion or similar payment with respect to all or part of the principal amount thereof prior to the scheduled maturity thereof.

"***Closing Date***": the date on which all of the conditions precedent set forth in Section 5.2 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders or the Required Lenders with respect to the initial extension of Term Loans and Revolving Commitments.

"***Code***": the U.S. Internal Revenue Code of 1986.

"***Collateral***": all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document. For the avoidance of doubt, no Excluded Asset shall constitute "Collateral".

"***Collateral Information Certificate***": the Collateral Information Certificate to be executed and delivered by the Borrower pursuant to Section 5.2, substantially in the form of Exhibit J.

"***Collateral-Related Expenses***": all reasonable costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent's and its agents and counsel, and reimbursement for all other reasonable costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

"***Commitment***": as to any Lender, the sum of its Term Commitment and its Revolving Commitment.

"***Commitment Fee Rate***": initially, the rates per annum corresponding to Level II in the table set forth under the relevant column set forth the definition of Applicable Margin; provided that commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the fiscal quarter of the Borrower and its Subsidiaries ending June 30, 2021, together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), "***Commitment Fee rate***" shall mean the rate per annum set forth under the relevant column heading set forth in the definition of Applicable Margin.

"***Commodity Exchange Act***": the Commodity Exchange Act (7 U.S.C. Section 1 *et seq.*), as amended from time to time, and any successor statute.

"***Communications***": as defined in Section 10.2(c)(ii).

"***Compliance Certificate***": a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B.

"***Connection Income Taxes***": Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Consolidated Capital Expenditures***": for any period, with respect to the Group Members, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Group Members) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in "additions to property, plant or equipment" or comparable items reflected in the consolidated statement of cash flows of the Group Members; provided that "***Consolidated Capital Expenditures***" shall not include (a) expenditures in respect of normal replacements and maintenance which are properly charged to current operations, (b) expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (c) expenditures made as a tenant as leasehold improvements during such period to the extent reimbursed by the landlord during such period, (d) expenditures for replacements, restorations or substitutions for assets to the extent made with the net cash proceeds of a Disposition permitted by Section 7.5, (e) expenditures for any asset acquired in exchange for an existing asset (but only to the extent of the value of such existing asset), (f) expenditures that constitute a Permitted Acquisition, (g) expenditures made during such period to the extent made with the identifiable proceeds of a substantially contemporaneous issuance of equity by the Borrower, or (h) expenditures that, pursuant to a written agreement, are reimbursed (or reimbursable and reasonably expected to be received in cash within 120 days of the last day of such period) by a third Person (excluding a Group Member).

"***Consolidated EBITDA***": with respect to the Borrower and its consolidated Subsidiaries for any period,

(a) Consolidated Net Income, plus

(b) the sum, without duplication, of the amounts for such period but solely to the extent deducted in calculating Consolidated Net Income, for such period of:

(i) Consolidated Interest Expense, plus

(ii) provisions for taxes based on income, profits and capital gain and franchise taxes, plus

(iii) total depreciation expense, plus

(iv) total amortization expense, plus

(v) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), plus

(vi) losses in connection with casualty events to the extent covered by insurance with respect to which the applicable insurer has assumed responsibility (without regard to proceeds of business interruption insurance), plus

(vii) costs and expenses relating to the Loan Documents, the refinancing of the Existing Credit Facility, the retirement or exchange of the 2022 Notes and the incurrence of the 2026 Notes, plus

(viii) other extraordinary, unusual or nonrecurring losses, charges or expenses approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA (such approval not to be unreasonably withheld, conditioned or delayed), plus

(ix) non-cash charges for employee compensation plans (including stock option compensation), plus

(x) one-time expenses attributable to the procurement and implementation of a new enterprise resource planning system in an amount not to exceed $2,000,000 in any trailing four quarter period and $4,000,000 during the term of this Agreement, plus

(xi) the amount of pro forma "run rate" cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the elimination of a public target's Public Company Costs) and operating expense reductions attributable to operating improvements, strategic initiatives, synergies or other actions actually taken (it is understood and agreed that "*run rate*" means the full recurring benefit for a period that is associated with any action actually taken, net of the amount of actual benefits realized during such period from such actions) that are projected by the Borrower in good faith to be realized within 12 months of the last day of such period (including from any actions taken in whole or in part prior to such date), which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the elimination of a public target's Public Company Costs) and operating expense reductions had been realized on the first day of such period, in each case, net of the amount of actual benefits realized prior to or during such period from such actions; *provided* that such cost savings are reasonably identifiable and factually supportable (in the good faith determination of the Borrower); and provided further that (A) the aggregate amount added back pursuant to this clause (xi) and clause (xii) below shall not exceed for any period of four consecutive fiscal quarters, an amount equal to 12.5% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments), (B) no such amounts added back pursuant to this clause (xi) shall be duplicative of any expense or charges otherwise added back to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period and (C) no adjustments pursuant to this clause (xi) may be attributable to the implementation of the Group Member's new enterprise resource planning system, plus

(xii) the amount of any restructuring charge, accrual, reserve (and adjustments to existing reserves) or expense, integration cost, inventory optimization programs or other business optimization expense or cost (including charges directly related to the implementation of cost-savings initiatives and tax restructurings) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any such costs incurred in connection with acquisitions or divestitures after the Closing Date, any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), costs related to entry into new markets (including unused warehouse space costs) and new product introductions (including labor costs, scrap costs and lower absorption of costs, including due to decreased productivity and greater inefficiencies), systems

development and establishment costs, operational and reporting systems, technology initiatives, contract termination costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities (including severance, rent termination, moving and legal costs) and to exiting lines of business and consulting fees incurred with any of the foregoing; provided that the aggregate amount added back pursuant to this clause (xii) and clause (xi) above shall not exceed for any period of four consecutive fiscal quarters, an amount equal to 12.5% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments), plus

(xiii) Public Company Costs paid in cash during such period, plus

(xiv) proceeds from business interruption insurance received during such period (to the extent not reflected as revenue or income in Consolidated Net Income and to the extent that the related loss was deducted in the determination of Consolidated Net Income), plus

(xv) any fees, costs, expenses or charges related to any actual, proposed or contemplated issuance of Capital Stock, Investment, acquisition, disposition outside of the ordinary course of business, recapitalization or the incurrence of Indebtedness permitted to be incurred hereunder (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Closing Date), including (i) such fees, expenses or charges (including rating agency fees, consulting fees and other related expenses and/or letter of credit or similar fees) related to the offering or incurrence of, or ongoing administration, of the Permitted Convertible Indebtedness, this Agreement, any other credit facilities, and (ii) any amendment, waiver or other modification of the Permitted Convertible Indebtedness, this Agreement, any other Indebtedness or any issuance of Capital Stock, in each case, whether or not consummated, to the extent deducted (and not added back) in computing Consolidated Net Income, plus

(xvi) contingent obligations, purchase price adjustments, milestone payments, earn-out payments and indemnity obligations incurred in connection with any Permitted Acquisition, minus

(c) the sum, without duplication of the amounts for such period of:

(i) non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus

(ii) interest income increasing Consolidated Net Income for such period, plus

(iii) capitalized software development costs (other than those with respect to the Group Member's enterprise resource planning system in an amount not to exceed $10,000,000 during the term of this Agreement) and capitalized sales commissions less current amortized sales commission from prior capitalized commissions;

provided that, without duplication of any adjustment set forth above, Consolidated EBITDA for any period shall be determined on a Pro Forma Basis to give effect to any Permitted Acquisitions or any similar permitted Investment or any disposition of any business or assets consummated during such period, in each case as if such transaction occurred on the first day of such period and in accordance with Regulation S-X promulgated by the SEC.

The parties hereto agree that Consolidated EBITDA for the fiscal quarter ending (i) on June 30, 2020 is $10,005,000 (ii) on September 30, 2020 is $9,033,000 (iii) on December 31, 2020 is $13,513,000 and (iv) on March 31, 2021 is $8,717,000.

Consolidated Fixed Charge Coverage Ratio": with respect to the Group Members for any period of four consecutive fiscal quarters, the ratio of (a) the sum of (i) Consolidated EBITDA for such period minus (ii) the portion of taxes based on income actually paid in cash (net of any cash refunds received) during such period (including for purposes hereof, tax distributions made during such period) minus (iii) Consolidated Capital Expenditures (including capitalized software development costs only to the extent not deducted in calculating Consolidated EBITDA but excluding the principal amount of Consolidated Capital Expenditures funded with the Loans incurred in connection with such expenditures) minus (iv) cash dividends, management fees, distributions (other than tax distributions) and other Restricted Payments paid to any Person that is not a Loan Party during such period to (b) Consolidated Fixed Charges for such period.

"***Consolidated Fixed Charges***": with respect to the Group Members for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, plus (b) scheduled payments made during such period on account of principal of Indebtedness of the Group Members (including scheduled principal payments in respect of the Term Loans but excluding any repayments of Revolving Loans to the extent not accompanied by a concurrent and permanent reduction of the Revolving Commitment, repayments of Permitted Convertible Indebtedness, mandatory prepayments required by Section 2.12 and repayments of any intercompany Investments); provided that, for the fiscal quarter ending (x) September 30, 2021, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the amount of Consolidated Fixed Charges for such fiscal quarter multiplied by 4, (y) December 31, 2021, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the sum of the amount of Consolidated Fixed Charges for such fiscal quarter plus the amount of Consolidated Fixed Charges for the fiscal quarter ending September 30, 2021 multiplied by 2, and (z) March 31, 2022, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the sum of the amount of Consolidated Fixed Charges for the fiscal quarters ending September 30, 2021, December 31, 2021 and March 31, 2022 multiplied by 4/3.

"***Consolidated Interest Expense***": for any period, total interest cash expense (including that attributable to Capital Lease Obligations) of the Group Members for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"***Consolidated Net Income***": for any period, the consolidated net income (or loss) of the Group Members, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of "Consolidated Net Income" (a) the income (or deficit) of any such Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with a Group Member, (b) the income (or deficit) of any such Person (other than a Subsidiary of the Borrower) in which a Group Member has an ownership interest, except to the extent that any such income is actually received by a Group Member in the form of dividends or similar distributions, and (c) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"***Consolidated Senior Indebtedness***": as of any date of determination, all Consolidated Total Indebtedness, but excluding Subordinated Indebtedness and Permitted Convertible Indebtedness.

"***Consolidated Senior Net Leverage Ratio***": as at the last day of any period of twelve (12) consecutive months, the ratio of (a) the Consolidated Senior Indebtedness on such day minus up to $25,000,000 of Qualified Cash to (b) the Consolidated EBITDA for such period.

"***Consolidated Total Indebtedness***": as of any date of determination, all Indebtedness of the Group Members, including, without limitation Indebtedness in respect of borrowed money, undrawn Letters of Credit, all drawn Letters of Credit for which the drawing thereunder has not been reimbursed, all Capital Lease Obligations, and the outstanding amount of any earn outs, hold backs and other obligations for deferred payments of consideration with respect to Permitted Acquisitions to the extent such obligations have become a liability on the balance sheet of the Group Members in accordance with GAAP.

"***Consolidated Total Net Leverage Ratio***": as at the last day of any period of twelve (12) consecutive months, the ratio of (a) the Consolidated Total Indebtedness on such day minus up to $25,000,000 of Qualified Cash to (b) the Consolidated EBITDA for such period.

"***Contract***": any contract, agreement, indenture, note, bond, loan, instrument, guarantee, deed, mortgage, lease, sublease, license, sublicense, other arrangement or agreement or undertaking (whether written, electronic or oral and whether express or implied) that is or purports by its terms to be legally binding, and including all amendments thereto.

"***Contractual Obligation***": as to any Person, obligation under any Contract.

"***Control Investment Affiliate***": as to any Person, any other Person that (a) directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies.

"***Control***": the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "***Controlling***" and "***Controlled***" have meanings correlative thereto.

"***Control Agreement***": any account control agreement in form and substance reasonably satisfactory to the Administrative Agent entered into among the depository institution at which a Loan Party maintains a Deposit Account or the securities intermediary at which a Loan Party maintains a Securities Account, such Loan Party, and the Administrative Agent pursuant to which the Administrative Agent obtains springing control (within the meaning of the UCC or any other applicable law) over such Deposit Account or Securities Account.

"***Convertible Indebtedness***": Indebtedness (including Permitted Convertible Indebtedness), the terms of which provide for conversion into or exchange for Capital Stock, cash or a combination thereof (or other reference property).

"***Corresponding Tenor***": with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"***Daily Simple SOFR***": for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"***Debtor Relief Laws***": the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency,

reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"***Declined Amount***": as defined in Section 2.12(e).

"***Default***": any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"***Default Rate***": as defined in Section 2.15(c).

"***Defaulting Lender***": subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) become the subject of a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

"***Deposit Account***": any "deposit account" as defined in the UCC with such additions to such term as may hereafter be made.

"***Deposit Account Control Agreement***": any Control Agreement entered into by the Administrative Agent, a Loan Party and a financial institution holding a Deposit Account of such Loan Party pursuant to which the Administrative Agent is granted "springing control" (for purposes of the UCC) over such Deposit Account.

"***Designated Jurisdiction***": any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"***Determination Date***": as defined in the definition of "Pro Forma Basis".

"***Device***": any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (b) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, (c) intended to affect the structure or any function of the body of man or other animals; and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes, or (d) any product otherwise classified as a "device" under the FD&C Act.

"***Device Approval Application***": with respect to any Device, a premarket approval application (PMA) submitted under Section 515 of the FD&C Act (21 U.S.C. § 360e), a de novo request submitted under Section 513(f) of the FD&C Act (21 U.S.C. § 360c(f)), or premarket notification submitted under Section 510(k) of the FD&C Act (21 U.S.C. § 360(k)), or any corresponding foreign application.

"***Discharge of Obligations***": subject to Section 10.8, the satisfaction of the Obligations (including all such Obligations relating to Cash Management Services) by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank or Qualified Counterparty) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Cash Management Services, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations under or in respect of Specified Swap Agreements and Cash Management Services, to the extent (a) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (b) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank), (c) no Obligations in respect of any Cash Management Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Cash Management Services have been Cash Collateralized in accordance with the terms hereof), and (d) the aggregate Commitments of the Lenders are terminated.

"***Disposition***": with respect to any property (including, without limitation, Capital Stock of any Group Member), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer, encumbrance or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) and any issuance of Capital Stock of any Group Member. The terms "***Dispose***" and "***Disposed of***" shall have correlative meanings. For the avoidance of doubt, none of (a) the sale of any Permitted Convertible Indebtedness by the Borrower or (b) the issuance of Capital Stock that is not Disqualified Stock pursuant to the conversion or exchange of Permitted Convertible Indebtedness shall constitute a Disposition.

"***Disqualified Lender***": (a) each lender designated by the Borrower in writing to the Administrative Agent on or before the Effective Date, (b) any other Persons who operates a company directly and primarily engaged in the business of developing, manufacturing and servicing radiation oncology devices as designated by the Borrower in writing to the Administrative Agent at any time after the Effective Date, and (c) in each case of the foregoing clauses (a) and (b), any of such Person's Affiliates (other than any bona

fide fund, investment vehicle, regulated banking entity or non-regulated lending entity that is (x) primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business) that is clearly identifiable as an Affiliate on the basis of such Affiliate's name. Any update to the list of Disqualified Lenders shall not become effective until five Business Days following delivery to the Administrative Agent by email and shall not apply retroactively to any prior assignment or participation interest or to any trade to acquire such participation interest. The list of Disqualified Lenders shall be made available by the Administrative Agent to the Lenders upon request. The Administrative Agent shall have no obligation to monitor any non-compliance by any Lender hereunder with respect to provisions relating to Disqualified Lenders or the disclosure of Confidential Information to any Disqualified Lender, and neither the Administrative Agent nor the Lenders shall be required to determine any such affiliation status pursuant to item (c) of this definition nor shall the Administrative Agent or any Lender by liable for failure to make any such determination.

"***Disqualified Stock***": any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Group Members may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends. Notwithstanding the preceding sentence, (i) any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to be paid upon liquidation, dissolution, winding up or pursuant to such other applicable statutory or regulatory obligations of the issuer of such Capital Stock will not constitute Disqualified Stock if the terms of such Capital Stock provide that such payments may not be made with respect to such Capital Stock unless such payments are made in accordance with Section 7.6 hereof and (ii) if such Capital Stock is issued pursuant to a plan or agreement for the benefit of the Borrower's or its Subsidiaries' employees or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death, or disability.

"***Division***": in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Company Act, or any analogous action taken pursuant to any other applicable Requirements of Law.

"***Dollars***" and "***$***": dollars in lawful currency of the United States.

"***Domestic Subsidiary***": any Subsidiary of the Borrower organized under the laws of the United States, and any state thereof or the District of Columbia.

"***Early Opt-in Election***": if the then-current Benchmark is the Eurodollar Rate, the occurrence of:

(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, Term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from the Eurodollar Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.

"***EEA Financial Institution***": (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"***EEA Member Country***": any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"***EEA Resolution Authority***": any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"***Effective Date***": the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived by the Administrative Agent and, as applicable, the Lenders or the Required Lenders.

"***Election Period***": as defined in Section 2.27(c).

"***Eligible Assignee***": any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)); provided, that, "***Eligible Assignee***" shall not include any Disqualified Lender unless a Specified Event of Default has occurred and is continuing without the consent of the Borrower.

"***Environmental Laws***": any and all foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health (as it pertains to exposure to Materials of Environmental Concern) or the environment, as now or may at any time hereafter be in effect.

"***Environmental Liability***": any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Group Member directly or indirectly resulting from or based upon (a) a violation of an Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the release or threatened release of any Materials of Environmental Concern into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***ERISA***": the Employee Retirement Income Security Act of 1974, as amended, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

"***ERISA Affiliate***": each business or entity which is, or within the last six years was, a member of a "controlled group of corporations," under "common control" or an "affiliated service group" with any Loan Party within the meaning of Section 414(b), (c), (m) or (n) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under "common control" with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

"***ERISA Event***": any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Loan Party or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Group Member may be directly or indirectly liable or (m) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code.

"***ERISA Funding Rules***": the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"***Erroneous Payment***": as defined in Section 9.14(a).

"***Erroneous Payment Deficiency Assignment***": as defined in Section 9.14(d).

"***Erroneous Payment Return Deficiency***": as defined in Section 9.14(d).

"***Erroneous Payment Subrogation Rights***": as defined in Section 9.14(d).

"***Eurocurrency Reserve Requirements***": for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations

of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

"***Eurodollar Base Rate***": with respect to each day during each Interest Period pertaining to (a) a Eurodollar Loan, the rate per annum determined by the Administrative Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate ("***LIBOR***") (or any successor thereto if the ICE Benchmark Administration is no longer making LIBOR available) for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period (as set forth by Bloomberg Information Service or any successor thereto or any other commercially available service selected by the Administrative Agent which provides quotations of LIBOR) and (b) an ABR Loan, the rate per annum determined by the Administrative Agent to be LIBOR (for delivery on the first day of such Interest Period) with a term of one (1) month in Dollars, determined as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period (as set forth by Bloomberg Information Service or any successor thereto or any other commercially available service selected by the Administrative Agent which provides quotations of LIBOR); provided that in either case (a) or (b), the Eurodollar Base Rate shall not be less than 0.5%. Subject to Section 2.17(b), in the event that the Administrative Agent determines that LIBOR is not available, the "Eurodollar Base Rate" shall be determined by reference to the rate per annum equal to the offered quotation rate to first class banks in the London interbank market by SVB for deposits (for delivery on the first day of the relevant Interest Period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of the Administrative Agent, in its capacity as a Lender, for which the Eurodollar Base Rate is then being determined with maturities comparable to such period, in the case of a Eurodollar Loan, and of one (1) month, in the case of an ABR Loan, as of approximately 11:00 A.M. (London, England time) two (2) Business Days prior to the beginning of such Interest Period; provided that, in all events, such Eurodollar Base Rate shall not be less than 0.5%.

"***Eurodollar Loans***": Loans the rate of interest applicable to which is based upon clause (a) of the definition of Eurodollar Base Rate.

"***Eurodollar Rate***": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula:

$$\frac{\text{Eurodollar Base Rate}}{\text{1.00 - Eurocurrency Reserve Requirements}}$$

The Eurodollar Rate shall be adjusted automatically as of the effective date of any change in the Eurocurrency Reserve Requirements; provided that the Eurodollar Rate shall not be less than 0.50%.

"***Eurodollar Tranche***": the collective reference to Eurodollar Loans under a particular Facility (other than the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"***EU Bail-In Legislation Schedule***": the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"***Event of Default***": any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"***Exchange Act***": the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

"***Excluded Assets***": as defined in the Guarantee and Collateral Agreement.

"***Excluded Subsidiary***": subject to Section 6.13, any Subsidiary that is (a) a Foreign Subsidiary or a Domestic Subsidiary of a Foreign Subsidiary, (b) a Foreign Subsidiary Holding Company, (c) an Immaterial Subsidiary, (d) each Subsidiary that is prohibited by any applicable Requirements of Law from guaranteeing the Obligations at the time such Subsidiary becomes a Subsidiary and for so long as such restriction or any replacement or renewal thereof is in effect or would require governmental (including regulatory) consent, approval, license or authorization to guarantee the Obligations (unless such consent, approval, license or authorization has been received), or (e) any other Subsidiary with respect to which, in the reasonable judgment of both the Administrative Agent and the Borrower, as agreed in writing, the cost or other consequences of providing a guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom; provided, that in any case of the foregoing, such Subsidiary is not otherwise required to become a Guarantor pursuant to Section 6.13.

"***Excluded Swap Obligations***": with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee Obligation of such Guarantor with respect to, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such Guarantee Obligation of such Guarantor, or the grant by such Guarantor of such Lien, becomes effective with respect to such Swap Obligation. If such a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee Obligation or Lien is or becomes excluded in accordance with the first sentence of this definition.

"***Excluded Taxes***": any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.20(f) and (d) any withholding Taxes imposed under FATCA.

"***Existing Agent***": individually or collectively as applicable (i) MidCap Financial Trust, a Delaware statutory trust, in its capacity as the administrative agent pursuant to the Existing Term Loan Facility, and (b) Midcap Funding IV Trust, a Delaware statutory trust, in its capacity as the administrative agent pursuant to the Existing Revolver Facility.

"***Existing Credit Facilities"***: (a) the Existing Revolver Facility and (b) the Existing Term Loan Facility.

"***Existing Letters of Credit***": the letters of credit described on Schedule 1.1B.

"***Existing Revolver Facility"***: that certain Credit and Security Agreement (as may have been amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date), dated as of June 14, 2017 by and among Borrower, TomoTherapy Incorporated, Existing Agent and the other parties party thereto.

"***Existing Term Loan Facility"***: that certain Credit and Security Agreement (as may have been amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date), dated as of December 15, 2017 by and among Borrower, TomoTherapy Incorporated, Existing Agent and the other parties party thereto.

"***Facility***": each of (a) the Term Facility, (b) the L/C Facility (which is a sub-facility of the Revolving Facility), (c) the Swingline Facility (which is a sub-facility of the Revolving Facility) and (d) the Revolving Facility.

"***FASB ASC***": the Accounting Standards certification of the Financial Accounting Standards Board.

"***FATCA***": Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"***FDA***": the United States Food and Drug Administration and any successor agency or entity thereof or any analogous agency or entity in any other jurisdiction.

"***FD&C Act***": the United States Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq., including, without limitation, the Electronic Product Radiation Control provisions and Medical Device provisions thereof (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder, or any analogous Requirements of Law in any other jurisdiction, including but not limited to the various states of the United States.

"***Federal Funds Effective Rate***": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

"***Fee Letter***": the letter agreement dated April 14, 2021, between the Borrower and the Administrative Agent.

"***Flood Laws***": the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

"***Floor***": the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Eurodollar Rate.

"***Flow of Funds Agreement***": the spreadsheet or other similar statement prepared by the Administrative Agent and approved by the Borrower regarding the disbursement of Loan proceeds, the funding and the payment of the fees and expenses of the Administrative Agent and the Lenders (including their respective counsel), and such other matters as may be agreed to by the Borrower, the Administrative Agent and the Lenders.

"***Foreign Lender***": a Lender that is not a U.S. Person.

"***Foreign Subsidiary***": any Subsidiary of the Borrower that is not a Domestic Subsidiary.

"***Foreign Subsidiary Holding Company***": any direct or indirect Domestic Subsidiary of the Borrower, substantially all of the assets of which consist of Capital Stock of or indebtedness issued by (a) one or more controlled foreign corporations (within the meaning of Section 957 of the Code) or (b) other Foreign Subsidiary Holding Companies; provided that for the avoidance of doubt TomoTherapy Incorporated shall not be deemed to be a Foreign Subsidiary Holding Company.

"***Fronting Exposure***": at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender's L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders.

"***Fund***": any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"***Funding Office***": the Revolving Loan Funding Office or the Term Loan Funding Office, as the context requires.

"***GAAP***": generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any "***Accounting Change***" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "***Accounting Changes***" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC, or the adoption of IFRS.

"***Governmental Approval***": any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"***Governmental Authority***": the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, and any group or body charged with setting accounting or regulatory capital rules or standards (including the Financial Standards Board, the Bank for International Settlements, the Basel Committee on Banking Supervision and any successor or similar authority to any of the foregoing).

"***Group Members***": the collective reference to the Borrower and its Subsidiaries.

"***Guarantee and Collateral Agreement***": the Guarantee and Collateral Agreement to be executed and delivered by the Loan Parties, substantially in the form of Exhibit A.

"***Guarantee Obligation***": as to any Person (the "***guaranteeing person***"), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the "***primary obligations***") of any other third Person (the "***primary obligor***") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"***Guarantors***": a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the requirements of Section 6.12 and Section 6.13 hereof and the Guarantee and Collateral Agreement. Subject to Section 6.13, no Excluded Subsidiary shall be required to become a Guarantor.

"***Healthcare Law***": the laws, codes, policies and guidelines of all Governmental Authorities relating to the production, preparation, propagation, compounding, conversion, pricing, marketing, promotion, sale, distribution, coverage, or reimbursement of a drug, device, biological or other medical item, supply or service, including, without limitation, the U.S. Food, Drug and Cosmetic Act of 1938 ("FD&C Act"), 21 U.S.C. Ch. 9, as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder, billing and collection practices relating to the payment for healthcare services or supplies, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the federal healthcare program anti- kickback statute (42 U.S.C. § 1320a- 7b),the Stark laws (42 U.S.C. § 1395nn), the Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) and the Federal Health Care Fraud Law (18 U.S.C. § 1347) the healthcare fraud, false statement and health information privacy and security provisions of the Health Insurance Portability and Accountability Act of

1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act ("**HIPAA**"), the federal healthcare program civil money penalty and exclusion authorities 42 U.S.C. § 1320a-7a), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the statutes, regulations and binding directives of applicable federal healthcare programs of Medicare, Medicaid and other healthcare programs of other Governmental Authorities, including the Veterans Health Administration and United States Department of Defense healthcare and contracting programs, and the analogous Requirements of Law of any other jurisdiction.

"***HIPAA***": has the meaning set forth in the definition of Healthcare Laws.

"***IDE***": an application, including an application filed with a Governmental Authority, for authorization to commence human clinical studies, including (a) an Investigational Device Exemption as defined in the FD&C Act or any successor application or procedure filed with the FDA, (b) an abbreviated IDE as specified in FDA regulations in 21 C.F.R. § 812.2(b), (c) any equivalent of a United States IDE in other countries or regulatory jurisdictions, (d) all amendments, variations, extensions and renewals thereof that may be filed with respect to the foregoing and (e) all related documents and correspondence thereto, including documents and correspondence with institutional review boards or IECs.

"***IECs***": independent ethics committees.

"***IFRS***": international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

"***Immaterial Subsidiary***": as of the last day of each fiscal quarter of the Borrower and at any other date of determination, any Subsidiary of the Borrower (other than a Guarantor) designated as such by the Borrower in writing and which as of such date (a) holds assets representing 5.0% or less of the Borrower's consolidated total assets as of such date (determined in accordance with GAAP and excluding investments in Subsidiaries and intercompany receivables that would be eliminated in consolidated financial statements, and goodwill), (b) has generated less than 5.0% of the Borrower's consolidated total revenues (excluding intercompany revenue that would be eliminated in consolidated financial statements) determined in accordance with GAAP for the four (4) consecutive fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Effective Date pursuant to Section 6.1(b); provided that all Subsidiaries that are individually ***"Immaterial Subsidiaries"*** shall not have aggregate consolidated total assets (excluding investments in subsidiaries and intercompany receivables that would be eliminated in consolidated financial statements, and goodwill) that would represent 10.0% or more of the Borrower's consolidated total assets as of such date or have generated 10.0% or more of the Borrower's consolidated total revenues (excluding any intercompany revenue that would be eliminated in consolidated financial statements) for such four (4) consecutive fiscal quarter period, in each case determined in accordance with GAAP, (c) owns no material Intellectual Property, and (d) is not the owner of Capital Stock of any Group Member that would not constitute an Immaterial Subsidiary.

"***Increase Effective Date***": as defined in Section 2.27(d).

"***Incremental Facility***": an Incremental Term Loan or Incremental Revolving Commitment.

"***Incremental Joinder***": an instrument, in form and substance reasonably satisfactory to the Administrative Agent, by which a Lender becomes a party to this Agreement pursuant to Section 2.27.

"***Incremental Term Loan***": as defined in Section 2.27(a).

"***Incremental Revolving Commitment***": as defined in Section 2.27(b).

"***Incurred***": as defined in the definition of "Pro Forma Basis".

"***Indebtedness***": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than (i) current trade payables incurred in the ordinary course of such Person's business, (ii) any earn-out obligation if such obligation is not required to be reflected on the balance sheet in accordance with GAAP and (iii) accruals for payroll and other liabilities, including deferred compensation arrangements, in each case, accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of Disqualified Stock, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such property secured or (ii) the amount of such Indebtedness of such other Person, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

"***Indemnified Taxes***": (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"***Indemnitee***": as defined in Section 10.5(b).

"***Insolvency Proceeding***": (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including any Debtor Relief Law.

"***Intellectual Property***": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"***Intellectual Property Security Agreement***": an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each

other intellectual property security agreement and supplement thereto delivered pursuant to Section 6.12, in each case as amended, restated, supplemented or otherwise modified from time to time.

"***Interest Payment Date***": (a) as to any ABR Loan (including any Swingline Loan), the first Business Day of each calendar quarter to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three (3) months or less, the last Business Day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three (3) months, each day that is three (3) months (or, if such date is not a Business Day, the Business Day next succeeding such date) after the first day of such Interest Period and the last Business Day of such Interest Period, and (d) as to any Loan (other than any Revolving Loan that is an ABR Loan and any Swingline Loan), the date of any repayment or prepayment made in respect thereof.

"***Interest Period***": as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one (1), three (3) or six (6) months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one (1), three (3) or six (6) months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent in a Notice of Conversion/Continuation not later than 10:00 A.M. on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Revolving Termination Date (in the case of Revolving Facility) or beyond the Term Loan Maturity Date (in the case of Term Loans);

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Loan.

"***Inventory***": all "inventory," as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Group Member for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Group Member's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

"***Investments***": as defined in Section 7.8.

"***IRS***": the U.S. Internal Revenue Service.

"***ISDA Definitions***": the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"***ISP***": with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"***Issuing Lender***": as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit (including, without limitation, each Existing Letter of Credit), and (b) any other Lender or Affiliate thereof that may become an Issuing Lender pursuant to Section 3.11 or 3.12, with respect to Letters of Credit issued by such Lender or its Affiliate. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term "Issuing Lender" shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution. For the avoidance of doubt, no Lender shall become an Issuing Lender unless it shall so agree.

"***Issuing Lender Fees***": as defined in Section 3.3(a).

"***Judgment Currency***": as defined in Section 10.19.

"***L/C Advance***": each L/C Lender's funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

"***L/C Commitment***": as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lenders' obligations and rights under and in respect of each Letter of Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to Section 3.5(b)) in an aggregate principal amount not to exceed the amount set forth under the heading "L/C Commitment" opposite such L/C Lender's name on Schedule 1.1A or in the Assignment and Assumption, Incremental Joinder or amendment pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

"***L/C Disbursements***": a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

"***L/C Exposure***": at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, and (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

"***L/C Facility***": the L/C Commitments and the extensions of credit made thereunder.

"***L/C Fee Payment Date***": as defined in Section 3.3(a).

"***L/C Lender***": a Lender with an L/C Commitment.

"***L/C Percentage***": as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender's L/C Commitment, as such percentage may be adjusted as provided in Section 2.24.

"***L/C-Related Documents***": collectively, each Letter of Credit (including any Existing Letter of Credit), all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender's standard form documents for letter of credit issuances.

"***LCA Election***": as defined in Section 1.4.

"***LCA Test Date***": as defined in Section 1.4.

"***Lenders***": as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the L/C Lenders, the Issuing Lender and the Swingline Lender.

"***Letter of Credit***": as defined in Section 3.1(a); provided that such term shall include each Existing Letter of Credit.

"***Letter of Credit Availability Period***": the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

"***Letter of Credit Fees***": as defined in Section 3.3(a).

"***Letter of Credit Fronting Fees***": as defined in Section 3.3(a).

"***Letter of Credit Maturity Date***": the date occurring fifteen (15) days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"***LIBOR***": as defined in the definition of "Eurodollar Base Rate."

"***Lien***": any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

"***Limited Condition Acquisition***": any Permitted Acquisition or similar permitted Investment, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing; *provided*, that, in the event the consummation of any such Permitted Acquisition or similar permitted Investment shall not have occurred on or prior to the date that is 120 days following the signing of the applicable Limited Condition Acquisition Agreement, such Permitted Acquisition shall no longer constitute a Limited Condition Acquisition for any purpose.

"***Limited Condition Acquisition Agreement***": any agreement providing for a Limited Condition Acquisition.

"***Liquidity***": at any time, the sum of (a) the aggregate amount of the Unrestricted Cash of the Loan Parties that is subject to a first priority perfected Lien in favor of the Administrative Agent for the benefit

of the Secured Parties (provided that such cash and Cash Equivalents shall not be required to be subject to a first priority Lien in favor of the Administrative Agent until the date that is 90 days after the Closing Date (or such later date as the Administrative Agent may consent in its sole and absolute discretion) and such Lien may be subject to such Liens and rights of set off as are set forth in the relevant Deposit Account Control Agreement or Securities Account Control Agreement, as the case may be, that governs the underlying Deposit Account or Securities Account), plus (b) the Available Revolving Commitment at such time.

"***Loan***": any loan made or maintained by any Lender pursuant to this Agreement.

"***Loan Documents***": this Agreement, each Security Document, each Note, the Fee Letter, each Assignment and Assumption, each Compliance Certificate, each Notice of Borrowing, each Notice of Conversion/Continuation, the Solvency Certificate, each Incremental Joinder, each subordination agreement or intercreditor agreement entered into pursuant to this Agreement, the Collateral Information Certificate, each L/C-Related Document, and any agreement creating or perfecting rights in cash collateral pursuant to the provisions of Section 3.10, or otherwise, and any amendment, waiver, supplement or other modification to any of the foregoing.

"***Loan Parties***": each Group Member that is a party to a Loan Document, as a Borrower or a Guarantor.

"***Mandatory Prepayment Date***": as defined in Section 2.12(e).

"***Market Withdrawal***": has the same meaning and usage as 21 C.F.R. 806.1(i) stating that a Person's removal from any market or correction of a Product that involves a minor violation that would not be subject to legal action by the FDA or that involves no violation.

"***Material Adverse Effect***": (a) a material adverse change in, or a material adverse effect on, the business, operations, assets, liabilities or financial condition of the Group Members, taken as a whole; (b) a material impairment in the perfection or priority of the Administrative Agent's Lien in any material Collateral or in the value of such Collateral or a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower or any Guarantor of any material Loan Document to which it is a party; or (c) a material impairment of the ability of Loan Parties taken as a whole to perform any of their payment or other material obligations under any Loan Document to which it is a party.

"***Materials of Environmental Concern***": any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity, radiofrequency radiation at levels known to be hazardous to human health and safety.

"***MFN Protection***": as defined in Section 2.27(i).

"***MidCap Payoff Letter***": a letter, in form and substance satisfactory to the Administrative Agent, dated as of a date on or prior to the Closing Date and executed by each of the Existing Agent and the Borrower to the effect that upon receipt by the Existing Agent of the "payoff amount" (however designated) referenced therein, (a) the obligations of the Group Members under the Existing Credit Facilities shall be satisfied in full, (b) the Liens held by the Existing Agent for the benefit of the lenders under the Existing Credit Facilities shall terminate without any further action, and (c) the Borrower shall be entitled to file UCC-3 termination statements, USPTO releases, USCRO releases and any other releases reasonably necessary to further evidence the termination of such Liens

"***Minority Lender***": as defined in Section 10.1(b).

"***Moody's***": Moody's Investors Service, Inc.

"***Mortgaged Properties***": the real properties as to which, pursuant to Section 6.12(b) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

"***Mortgages***": each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

"***Multiemployer Plan***": a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has in the preceding six (6) years been obligated to make, contributions.

"***Net Cash Proceeds***": (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received in the form of cash and Cash Equivalents), net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document) and other customary costs, fees and expenses actually incurred in connection therewith and net of taxes paid and the Borrower's reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by any Group Member in connection with such Asset Sale or Recovery Event in the taxable year that such Asset Sale or Recovery Event is consummated, the computation of which shall, in each such case, take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary costs, fees and expenses actually incurred in connection therewith.

"***Non-Consenting Lender***": any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

"***Non-Defaulting Lender***": at any time, each Lender that is not a Defaulting Lender at such time.

"***Note***": a Term Loan Note, a Revolving Loan Note or a Swingline Loan Note.

"***Notice of Borrowing***": a notice substantially in the form of Exhibit K.

"***Notice of Conversion/Continuation***": a notice substantially in the form of Exhibit L.

"***NRC***": the United States Nuclear Regulatory Commission, and any successor agency or entity thereof or any analogous agency or entity in any other jurisdiction.

"***Obligations***": (a) the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of the Loan Parties (and the other Group Members in the cash of obligations in respect of Cash Management Services) to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, and any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Cash Management Agreement, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, to the extent that any applicable Cash Management Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty) that are required to be paid by any Group Member pursuant any Loan Document, Cash Management Agreement, Specified Swap Agreement or otherwise, and (b) Erroneous Payment Subrogation Rights. For the avoidance of doubt, the Obligations shall not include (a) any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender, or (b) solely with respect to any Guarantor that is not a Qualified ECP Guarantor, any Excluded Swap Obligations of such Guarantor.

"***OFAC***": the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

"***Operating Documents***": for any Person as of any date, such Person's constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof) and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"***Other Connection Taxes***": with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"***Other Taxes***": all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

"***Participant***": as defined in Section 10.6(d).

"***Participant Register***": as defined in Section 10.6(d).

"***Patriot Act***": the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

"***Payment Conditions***": (a) immediately before and immediately after giving effect to the applicable payment or transaction, no Event of Default shall have occurred and be continuing, and (b) immediately after giving effect to the applicable payment or transaction, the Borrower is in pro forma compliance with all financial covenants set forth in Section 7.1.

"***Payment Recipient***": as defined in Section 9.14(a).

"***PBGC***": the Pension Benefit Guaranty Corporation, or any successor thereto.

"***Pension Plan***": an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (b) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Permits***": all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, provider numbers, marketing authorizations, other authorizations, registrations, permits, consents and approvals of the Borrower and each of its Subsidiaries required under any Requirement of Law applicable to the Group Members' business or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Requirements of Law applicable to the business of the Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "Permits" includes all governmental authorizations and Product Authorizations of the Borrower and each of its Subsidiaries.

"***Permitted Acquisition***": as defined in Section 7.8(k).

"***Permitted Convertible Indebtedness***": the 2022 Notes and the 2026 Notes and any extension, refinancing, renewal, replacement, exchange or modification thereof provided that, in each such case, (a) as of the date of issuance thereof, such Indebtedness contains terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for notes of such type (in each case, as determined by the Borrower in good faith); provided that the interest rate on such Indebtedness shall not exceed 5.0% per annum (other than with respect to the 2026 Notes which cannot exceed 4.00% per annum), (b) such Indebtedness is convertible or exchangeable into shares of common stock of the Borrower (or other securities of a successor Person following merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower, (c) other than the 2022 Notes (the outstanding principal amount of which at no time shall exceed $10,000,000) and 2026 Notes, such indebtedness shall have a stated final maturity date that is no earlier than the date 91 days after the Revolving Termination Date (the "***Earliest Date***") and shall not be subject to any conditions that could result in such stated final maturity occurring earlier than the Earliest Date (it being understood that any conversion of such notes (whether into cash, shares of common stock in Borrower or any combination thereof), a repurchase of such notes on account of the occurrence of a "fundamental change" or any redemption of such notes at the option of the Borrower shall not be deemed to constitute a change in the stated final maturity thereof); provided that any Indebtedness incurred to refinance the 2026 Notes shall comply with this clause (c), (d) such Indebtedness shall not be required to be repaid, prepaid, redeemed,

repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon any conversion of such notes (whether into cash, shares of common stock in Borrower or any combination thereof), the occurrence of an event of default or a "fundamental change" or following Borrower's election to redeem such notes) prior to the Earliest Date, (e) such Indebtedness shall be unsecured and no Group Member that is not a Loan Party shall have primary or Guarantee Obligations thereunder, and (f) any cross-default or cross acceleration (or comparable term or concept) provision contained in the agreements governing such Indebtedness that relates to indebtedness or other payment obligations of the Group Members contains a cure period of at least 30 calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under the cross defaulted obligation results in an event of default under such cross default or cross acceleration provision.

"***Permitted Refinancing***": Indebtedness issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, repurchase, retire or refinance (any of the foregoing, a "refinancing"), in whole or part, any Indebtedness referenced in Section 7.2; provided

(i) such Indebtedness shall not have a greater principal amount than (w) the principal amount (or accreted value, if applicable) of the Indebtedness being refinanced thereby plus (x) customary accrued interest, fees, premiums (if any) and penalties thereon and fees and expenses associated with the refinancing, plus (y) an amount equal to any existing commitments unutilized thereunder, plus (z) an amount equal to any other basket under Section 7.2 available for the incurrence of such Indebtedness; provided that any increase in such Indebtedness in reliance on this clause (z) shall reduce such other basket on a dollar-for-dollar basis;

(ii) the Indebtedness being refinanced thereby shall be repaid, repurchased, retired, defeased or satisfied and discharged, and all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, on the date such Indebtedness is issued, incurred or obtained;

(iii) such Indebtedness shall not at any time be incurred or guaranteed by any Person other than a Person that is an obligor or guarantor of the Indebtedness being refinanced thereby;

(iv) if secured, such Indebtedness shall not be secured by property other than property securing the Indebtedness being refinanced thereby, and, if applicable, any after-acquired property that is affixed or incorporated into such assets and the proceeds and products thereof;

(v) such Indebtedness shall not have a shorter average weighted maturity than the remaining average weighted maturity of the Indebtedness being refinanced, or a maturity shorter than the Indebtedness being refinanced;

(vi) the terms of such Indebtedness other than fees and interest are not, taken as a whole, less favorable to the obligor thereunder than the terms of the Indebtedness being refinanced; and

(vii) if the Indebtedness being refinanced is subordinated to repayment of the Obligations or the Liens granted pursuant to the Loan Documents, such Indebtedness shall also be subordinated on terms no less favorable to the Administrative Agent and the Lenders as those that were applicable to the Indebtedness being refinanced.

"***Person***": any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"***Plan***": (a) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by any Group Member or to which any Group Member has ever made, or was obligated to make, contributions, (b) a Pension Plan, or (c) a Qualified Plan.

"***Plan Asset Regulations***": 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, as amended from time to time.

"***Platform***": any of Debt Domain, DebtX, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"***Preferred Stock***": the preferred Capital Stock of the Borrower.

"***Prime Rate***": greater of (a) 0.00% and (b) the rate of interest per annum published in the money rates section of the Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the "Prime Rate" shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors).

"***Product***": any current or future service or product researched, designed, developed, manufactured, licensed, marketed, sold, performed, distributed or otherwise commercialized by the Borrower or any of its Subsidiaries, and any such product in development or which may be developed; *provided*, that for purposes of Article IV, "Product" shall not include products designed, developed and manufactured by third parties that are not Affiliates of the Borrower or any of its Subsidiaries.

"***Product Authorizations***": any and all approvals (including pricing and reimbursement approvals), licenses, notifications, registrations or authorizations of any Governmental Authority necessary for the manufacture, development, distribution, use, storage, import, export, transport, promotion, marketing, sale or other commercialization of a Product in any country or jurisdiction, including without limitation registration and listing, IDEs, Device Approval Applications (including any supplements and amendments thereto) or similar applications, post- approval marketing authorizations (including any prerequisite manufacturing approval or authorization related thereto), labeling approvals, and technical, medical, and scientific licenses.

"***Pro Forma Basis***": with respect to any calculation or determination for any period, in making such calculation or determination on the specified date of determination (the "***Determination Date***"):

(a) pro forma effect will be given to any Indebtedness incurred by the Group Members (including by assumption of then outstanding Indebtedness or by a Person becoming a Subsidiary) ("***Incurred***") after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;

(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period;

(c) Consolidated Fixed Charges related to any Indebtedness no longer outstanding or to be repaid or redeemed on the Determination Date, except for Consolidated Interest Expense accrued

during the reference period under a revolving credit to the extent of the commitment thereunder (or under any successor revolving credit) in effect on the Determination Date, will be excluded as if such Indebtedness was no longer outstanding or was repaid or redeemed on the first day of such period;

(d) pro forma effect will be given to: (A) the acquisition or disposition of companies, divisions or lines of businesses by the Group Members, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; and (B) the discontinuation of any discontinued operations but, in the case of Consolidated Fixed Charges, only to the extent that the obligations giving rise to Consolidated Fixed Charges will not be obligations of the Group Members following the Determination Date; in each case of clauses (A) and (B), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of the Borrower in accordance with Regulation S-X under the Securities Act based upon the most recent four full fiscal quarters for which the relevant financial information is available; it being agreed that such calculation will not be duplicative of any adjustments set forth in the definition of Consolidated EBITDA.

"***Projected Pro Forma Financial Statements***": pro forma and projected balance sheets, income statements and cash flow statements and projections prepared by the Borrower and its consolidated Subsidiaries that give effect (as if such events had occurred on such date) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, (ii) the incurrence of the 2026 Notes and (iii) the payment of fees and expenses in connection with the foregoing, in each case prepared as of December 31, 2020 and on a quarterly basis through the fiscal quarter ending June 30, 2022 and on an annual basis for each fiscal year thereafter through the term of this Agreement.

"***Projections***": as defined in Section 6.2(c).

"***Properties***": as defined in Section 4.17(a).

"***PTE***": a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"***Public Company Costs***": as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act of 1933 (as amended, and the rules and regulations of the SEC promulgated thereunder, as amended) and the Securities Exchange Act of 1934 (as amended, and the rules and regulations of the SEC promulgated thereunder, as amended) or any other comparable body of laws, rules or regulations, as companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to enhanced accounting functions and investor relations, stockholder meetings and reports to stockholders, directors' and officers' insurance and other executive costs, legal and other professional fees, listing fees and other transaction costs, in each case to the extent arising solely by virtue of the listing of such Person's equity securities on a national securities exchange or issuance of public debt securities.

"***Qualified Cash***": Unrestricted Cash held at such time by the Loan Parties in Deposit Accounts or Securities Accounts subject to a first priority perfected Lien in favor of the Administrative Agent.

"***Qualified Counterparty***": with respect to any Specified Swap Agreement, any counterparty thereto that is a Lender or an Affiliate of a Lender or, at the time such Specified Swap Agreement was

entered into or as of the Effective Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

"***Qualified ECP Guarantor***": in respect of any Swap Obligation, (a) each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guarantee Obligation of such Guarantor provided in respect of, or the Lien granted by such Guarantor to secure, such Swap Obligation (or guaranty thereof) becomes effective with respect to such Swap Obligation, and (b) any other Guarantor that (i) constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder, or (ii) can cause another Person (including, for the avoidance of doubt, any other Guarantor not then constituting a "Qualified ECP Guarantor") to qualify as an "eligible contract participant" at such time by entering into a "keepwell, support, or other agreement" as contemplated by Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"***Qualified Plan***": an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (b) that is intended to be tax-qualified under Section 401(a) of the Code.

"***Recipient***": the (a) Administrative Agent, (b) any Lender or (c) the Issuing Lender, as applicable.

"***Recovery Event***": any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member.

"***Reference Time***": with respect to any setting of the then-current Benchmark means (i) if such Benchmark is the Eurodollar Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (ii) if such Benchmark is not the Eurodollar Rate, the time determined by the Administrative Agent in its reasonable discretion.

"***Refinancing***": as defined in Section 2.11(b).

"***Refunded Swingline Loans***": as defined in Section 2.7(b).

"***Register***": as defined in Section 10.6(c).

"***Regulation T***": Regulation T of the Board as in effect from time to time.

"***Regulation U***": Regulation U of the Board as in effect from time to time.

"***Regulation X***": Regulation X of the Board as in effect from time to time.

"***Reinvestment Deferred Amount***": with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by any Loan Party in connection therewith that are not applied to prepay the Loans or other amounts pursuant to Section 2.12(e) as a result of the delivery of a Reinvestment Notice.

"***Reinvestment Event***": any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

"***Reinvestment Notice***": a written notice executed by a Responsible Officer stating that no Event of Default has occurred and that the Borrower (directly or indirectly through a Guarantor) intends and

expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire new or replacement assets or to repair assets useful in its business.

"***Reinvestment Prepayment Amount***": with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire new or replacement assets or to repair assets useful in the Borrower's business.

"***Reinvestment Prepayment Date***": with respect to any Reinvestment Event, the earlier of (a) the date occurring one hundred eighty days (180) (or such longer period as the Administrative Agent may agree in its reasonable discretion) after such Reinvestment Event, and (b) the date on which the Borrower (or its Subsidiaries) shall have determined not to, or shall have otherwise ceased to, acquire new or replacement assets or not to repair assets useful in the Borrower's business with all or any portion of the relevant Reinvestment Deferred Amount.

"***Related Parties***": with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"***Relevant Governmental Body***": the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"***Replacement Lender***": as defined in Section 2.23.

"***Required Lenders***": at any time, (a) if only one Lender holds the outstanding Term Loans and the Revolving Commitments, such Lender; and (b) if more than one Lender holds the outstanding Term Loans and Revolving Commitments, then at least two unaffiliated Lenders who hold more than 50% of the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding, and (ii) the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this clause (b), the outstanding principal amount of the Term Loans held by any Defaulting Lender and the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that a Lender and its Affiliates shall be deemed one Lender.

"***Requirement of Law***": as to any Person, any law (including the Healthcare Laws), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including, for the avoidance of doubt, the Basel Committee on Banking Supervision and any successor thereto or similar authority or successor thereto), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"***Resolution Authority***": an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"***Responsible Officer***": with respect to any Loan Party, the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of such Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party.

"***Restricted Payments***": as defined in Section 7.6. For purposes of clarification, a conversion or exchange of any Convertible Indebtedness (in accordance with its terms) shall not constitute a Restricted Payment.

"***Revolving Commitment***": as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading "Revolving Commitment" opposite such Lender's name on Schedule 1.1A, as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if Incremental Revolving Commitments are advanced thereunder, or in the Assignment and Assumption, an Incremental Joinder or other amendment pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Incremental Facilities permitted hereunder). The original amount of the Total Revolving Commitments is $40,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments. Notwithstanding anything to the contrary contained herein, in no case shall more than $30,000,000 of Revolving Loans or Letters of Credit be outstanding on the Closing Date.

"***Revolving Commitment Period***": the period from and including the Closing Date to the Revolving Termination Date.

"***Revolving Extensions of Credit***": as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender's L/C Percentage of the aggregate undrawn amount of all outstanding Letters of Credit (including any Existing Letters of Credit) at such time, plus (c) such Lender's L/C Percentage of the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, plus (d) such Lender's Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

"***Revolving Facility***": the Revolving Commitments and the extensions of credit made thereunder.

"***Revolving Lender***": each Lender that has a Revolving Commitment or that holds Revolving Loans.

"***Revolving Loan Conversion***": as defined in Section 3.5(b).

"***Revolving Loan Funding Office***": the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"***Revolving Loan Note***": a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

"***Revolving Loans***": as defined in Section 2.4(a).

"***Revolving Percentage***": as to any Revolving Lender at any time, the percentage which such Lender's Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments if all Lenders shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving

Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

"***Revolving Termination Date***": the earliest to occur of (x) May 6, 2026 and (y) the date which is ninety-one (91) days prior to the stated maturity of the 2026 Notes (other than any maturity occurring in connection with any refinancings, refundings, renewals or extensions of all or substantially all (it being understood that any refinancing, refunding, renewal or extension of all but $10,000,000 of outstanding principal amount of the 2026 Notes shall constitute substantially all of the 2026 Notes) the 2026 Notes (which results in the maturity date thereof being extended to a date which is at least ninety-one (91) days after May 6, 2026)).

"***S&P***": Standard & Poor's Ratings Services.

"***Sale Leaseback Transaction***": any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.

"***Sanction(s)***": any international economic sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"***SEC***": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"***Secured Parties***": the collective reference to the Administrative Agent, the Lenders (including any Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), any Cash Management Bank (in its or their respective capacities as providers of Cash Management Services), and any Qualified Counterparties.

"***Securities Account***": any "securities account" as defined in the UCC with such additions to such term as may hereafter be made.

"***Securities Account Control Agreement***": any Control Agreement entered into by the Administrative Agent, a Loan Party and a securities intermediary holding a Securities Account of such Loan Party pursuant to which the Administrative Agent is granted "springing control" (for purposes of the UCC) over such Securities Account.

"***Securities Act***": the Securities Act of 1933, as amended from time to time and any successor statute.

"***Security Documents***": the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) each Intellectual Property Security Agreement, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (g) each Pledge Supplement, (h) each Assumption Agreement, (i) all other security documents hereafter delivered to any applicable Cash Management Bank granting a Lien on any property of any Person to secure the Obligations of any Group Member arising under any Cash Management Agreement, and (j) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

"***SOFR***": with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"***SOFR Administrator***": the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"***SOFR Administrator's Website***": the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"***Solvency Certificate***": the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent pursuant to Section 5.2(m), which Solvency Certificate shall be in substantially the form of Exhibit D.

"***Solvent***": when used with respect to any Person, as of any date of determination, (a) the amount of the "fair value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the "present fair saleable value" of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts generally as they mature. For purposes of this definition, (i) "debt" means liability on a "claim," and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"***Specified Acquisition Agreement Representations***": such of the representations and warranties made by the sellers and their Affiliates in the Limited Condition Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower (or its applicable Affiliates) has the right (taking into account any applicable cure provisions) to terminate its (or such Affiliates') obligations under the Limited Condition Acquisition Agreement, or decline to consummate the acquisition (in each case, in accordance with the terms thereof), as a result of a breach of such representations and warranties.

"***Specified Event of Default***": any Event of Default under Section 8.1(a), or Section 8.1(f).

"***Specified Representations***": those representations and warranties made in Sections 4.3(a) (with respect to the organizational existence of the Loan Parties only after giving effect to the Limited Condition Acquisition), 4.4 (excluding the third sentence thereof), 4.5 (solely with respect to the first sentence and with respect to Operating Documents), 4.11, 4.14, 4.19, 4.20 (giving effect to the Limited Condition Acquisition and the incurrence of the Increase loans in connection therewith), 4.28 and 4.29 (solely to the effect that the use of proceeds of any Increase loans in connection with the Limited Condition Acquisition on the date of the acquisition will not violate the Foreign Corrupt Practices Act of 1977, the Patriot Act or sanctions administered by OFAC).

"***Specified Swap Agreement***": any Swap Agreement entered into by a Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Effective Date or as of the date such Swap Agreement was entered into) to the extent permitted under Section 7.13.

"***Subordinated Debt Document***": any agreement, certificate, document or instrument executed or delivered by any Group Member and evidencing Indebtedness of any Group Member which is subordinated to the Obligations (including payment, lien and remedies subordination terms, as applicable) in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

"***Subordinated Indebtedness***": Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent.

"***Subsidiary***": as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "***Subsidiary***" or to "***Subsidiaries***" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"***Surety Indebtedness***": as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Group Member as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Loan Party or any such Subsidiary.

"***SVB***": as defined in the preamble hereto.

"***Swap Agreement***": any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Group Members shall be deemed to be a "Swap Agreement."

"***Swap Obligation***": with respect to any Guarantor, any obligation of such Guarantor to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"***Swap Termination Value***": in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date any such Swap Agreement has been closed out and termination value determined in accordance therewith, such termination value, and (b) for any date prior to the date referenced in clause (a), the amount determined as the mark-to-market value for such Swap Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

"***Swingline Commitment***": the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed $5,000,000.

"***Swingline Lender***": SVB, in its capacity as the lender of Swingline Loans or such other Lender as the Borrower may from time to time select as the Swingline Lender hereunder pursuant to Section 2.7(f); provided that such Lender has agreed to be a Swingline Lender.

"***Swingline Loan Note***": a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

"***Swingline Loans***": as defined in Section 2.6.

"***Swingline Participation Amount***": as defined in Section 2.7(c).

"***Synthetic Lease Obligation***": the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"***Taxes***": all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"***Term Commitment***": as to any Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth under the heading "Term Commitment" opposite such Lender's name on Schedule 1.1A. The original aggregate principal amount of the Term Commitments is $80,000,000.

"***Term Facility***": the Term Commitments and the Term Loans made thereunder.

"***Term Lender***": each Lender that has a Term Commitment or that holds a Term Loan.

"***Term Loan***": the term loans made by the Lenders pursuant to Section 2.1 and any Incremental Term Loans.

"***Term Loan Funding Office***": the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"***Term Loan Maturity Date***": the earliest to occur of (x) May 6, 2026 and (y) the date which is ninety-one (91) days prior to the stated maturity of the 2026 Notes (other than any maturity occurring in connection with any refinancings, refundings, renewals or extensions of all or substantially all (it being understood that any refinancing, refunding, renewal or extension of all but $10,000,000 of outstanding principal amount of the 2026 Notes shall constitute substantially all of the 2026 Notes) the 2026 Notes (which results in the maturity date thereof being extended to a date which is at least ninety-one (91) days after May 6, 2026)).

"***Term Loan Note***": a promissory note in the form of Exhibit H-3, as it may be amended, supplemented or otherwise modified from time to time.

"***Term Percentage***": as to any Term Lender at any time, the percentage which such Lender's Term Commitments and funded Term Loans then constitutes of the aggregate Term Commitments and funded Term Loans of all Lenders.

"***Term SOFR***": for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"***Term SOFR Notice***": a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"***Term SOFR Transition Event***": the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, and is determinable for each Available Tenor, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement that is not Term SOFR.

"***Total Credit Exposure***": is, as to any Lender at any time, the unused Commitments, Revolving Extensions of Credit and outstanding Term Loans of such Lender at such time.

"***Total L/C Commitments***": at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to Section 2.10 or 3.5(b). The initial amount of the Total L/C Commitments on the Closing Date is $5,000,000.

"***Total Revolving Commitments***": at any time, the aggregate amount of the Revolving Commitments then in effect.

"***Total Revolving Extensions of Credit***": at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

"***Trade Date***": as defined in Section 10.6(b)(i)(B).

"***Type***": as to any Loan, its nature as an ABR Loan or a Eurodollar Loan.

"***UK Financial Institution***": any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"***UK Resolution Authority***": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"***Unadjusted Benchmark Replacement***": the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"***Unfriendly Acquisition***": any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

"***Uniform Commercial Code***" or "***UCC***": the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

"***United States***" and "***U.S.***": the United States of America.

"***Unrestricted Cash***": cash and Cash Equivalents of the Loan Parties that would not appear as "restricted" on a consolidated balance sheet of the Group Members (other than as are restricted in favor of the Administrative Agent to secure the Obligations).

"***USCRO***": the U.S. Copyright Office.

"***USPTO***": the U.S. Patent and Trademark Office.

"***U.S. Person***": any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***": as defined in Section 2.20(f).

"***Withholding Agent***": as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

"***Write-Down and Conversion Powers***": (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings), (iv) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to a given time of day shall, unless otherwise specified, be deemed to refer to Pacific time, and (vi) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as

amended, supplemented, restated, amended and restated or otherwise modified from time to time. Notwithstanding the foregoing clause (i), for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of any Group Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded

(c) The words "***hereof***," "***herein***" and "***hereunder***" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person's successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(e) Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person) on the first date of its existence. In connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person.

1.3 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.4 Limited Condition Acquisitions. In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires the calculation of Consolidated EBITDA, Consolidated Senior Net Leverage Ratio, Consolidated Fixed Charge Coverage Ratio or any other financial ratio or metric, at the option of the Borrower (and, if the Borrower elects to exercise such option, such option shall be exercised on or prior to the date on which the definitive agreement for such Limited Condition Acquisition is executed) (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "***LCA Election***"), then notwithstanding anything else to the contrary contained in this Agreement, the date of determination of whether any such action is permitted hereunder, shall be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "***LCA Test Date***"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any Incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent period of four fiscal quarters then ended prior to the LCA Test Date for which consolidated financial statements of the Borrower are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such

ratio or basket shall be deemed to have been complied with. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any basket availability with respect to the incurrence of Indebtedness, the grant of Liens, or the making of Investments, Restricted Payments, Dispositions, mergers and consolidations or other transfer of all or substantially all of the assets of any Loan Party or any Subsidiary on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a Pro Forma Basis assuming both that such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and have not been consummated.

SECTION 2
AMOUNT AND TERMS OF COMMITMENTS

2.1 Term Commitments. Subject to the terms and conditions hereof, each Term Lender severally agrees to make a Term Loan to the Borrower on the Closing Date in an amount equal to the amount of the Term Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.13.

2.2 Procedure for Term Loan Borrowing. The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. one (1) Business Day prior to the anticipated Closing Date) requesting that the Term Lenders make the Term Loans on the Closing Date and specifying the amount to be borrowed. Upon receipt of such Notice of Borrowing, the Administrative Agent shall promptly notify each Term Lender thereof. Not later than 12:00 P.M. on the Closing Date each Term Lender shall make available to the Administrative Agent at the Term Loan Funding Office an amount in immediately available funds equal to the Term Loan to be made by such Lender. The Administrative Agent shall credit the account of the Borrower on the books of such office of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Term Lenders in immediately available funds or, if so specified in the Flow of Funds Agreement, the Administrative Agent shall wire transfer or otherwise credit all or a portion of such aggregate amounts to the Existing Agent (for application against amounts in accordance with the wire instructions specified in the Flow of Funds Agreement).

2.3 Repayment of Term Loans. Beginning on September 30, 2021, the Term Loan shall be repaid in consecutive quarterly installments on the last day of each calendar quarter, each of which installments shall be in an amount equal to (a) from September 30, 2021 through and including June 30, 2022, 1.25% of the original principal amount of the Term Loans, (b) from September 30, 2022 through and including June 30, 2024, 1.875% of the original principal amount of the Term Loans, and (c) from September 30, 2024 and the last day of each quarter thereafter until the Term Loan Maturity Date, 2.50% of the original principal amount of the Term Loans.

To the extent not previously paid, all Term Loans shall be due and payable on the Term Loan Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

2.4 Revolving Commitments.

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a "***Revolving Loan***" and, collectively, the "***Revolving Loans***") to the

Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to the aggregate outstanding amount of the Swingline Loans, the aggregate undrawn amount of all outstanding Letters of Credit, and the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the amount of such Lender's Revolving Commitment. In addition, such aggregate obligations shall not at any time exceed the Total Revolving Commitments in effect at such time. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13.

(b) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

2.5 Procedure for Revolving Loan Borrowing. The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. (a) three (3) Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M. on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor, and (iv) instructions for remittance of the proceeds of the applicable Loans to be borrowed. Each borrowing under the Revolving Commitments shall be in an amount equal to $1,000,000 or a whole multiple of $100,000 in excess thereof (or, if the then Available Revolving Commitments are less than $1,000,000, such lesser amount); provided that the Swingline Lender may request, on behalf of the Borrower, borrowings under the Revolving Commitments that are ABR Loans in other amounts pursuant to Section 2.7). Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its *pro rata* share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 12:00 P.M. on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

2.6 Swingline Commitment. Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a "***Swingline Loan***" and, collectively, the "***Swingline Loans***") to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the Available Revolving Commitments would be less than zero, and (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans

only. The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Revolving Termination Date. The Swingline Lender shall not make a Swingline Loan during the period commencing at the time it has received notice (by telephone or in writing) from the Administrative Agent at the request of any Lender, acting in good faith, that one or more of the applicable conditions specified in Section 5.3 (other than Section 5.3(d)) is not then satisfied and has had a reasonable opportunity to react to such notice and ending when such conditions are satisfied or duly waived.

2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic notice (which telephonic notice must be received by the Swingline Lender not later than 12:00 P.M. on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to $100,000 or a whole multiple of $100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one Business Day's telephonic notice given by the Swingline Lender no later than 12:00 P.M. and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of such Swingline Loan (each a "***Refunded Swingline Loan***") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M. one Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "***Swingline Participation Amount***") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's *pro rata* portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving thirty (30) days' prior notice to the Administrative Agent, the Lenders and the Borrower. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Required Lenders and the successor Swingline Lender. After the resignation or replacement of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required or permitted to make any additional Swingline Loans.

2.8 [Reserved].

2.9 Fees.

(a) Fee Letter. The Borrower agrees to pay to the Administrative Agent the fees specified in the Fee Letter.

(b) Commitment Fee. As additional compensation for the Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in arrears, on the first day of each quarter prior to the Revolving Termination Date and on the Revolving Termination Date, a fee for the Borrower's non-use of available funds in an amount equal to the Commitment Fee Rate per annum multiplied by the difference between (x) the Total Revolving Commitments (as they may be reduced from time to time) and (y) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans, excluding the aggregate principal amount of Swingline Loans which shall be deemed to be zero for purposes hereof, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time.

(c) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

(d) Increase in Fees. At any time that an Event of Default exists, upon the request of the Required Lenders, the amount of any of the foregoing fees under subsections (a) and (b) shall be increased by adding 2.0% per annum thereto.

2.10 Termination or Reduction of Revolving Commitments.

The Borrower shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments without premium or penalty; provided that no such termination or reduction of the Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Available Revolving Commitments then in effect; provided that if such notice indicates that such termination or reduction is conditioned on the occurrence of a transaction it may be revoked if such transaction is not consummated. Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple thereof (or, if the then Total Revolving Commitments are less than $1,000,000, such lesser amount), and shall reduce permanently the Revolving Commitments then in effect; provided further, if in connection with any such reduction or termination of the Revolving Commitments a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. The Borrower shall have the right, without penalty or premium, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the L/C Commitments or, from time to time, to reduce the amount of the L/C Commitments; provided that no such termination or reduction of L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to $1,000,000, or a whole multiple thereof (or, if the then Total Revolving Commitments are less than $1,000,000, such lesser amount), and shall reduce permanently the L/C Commitments then in effect.

2.11 Optional Loan Prepayments.

(a) The Borrower may at any time and from time to time prepay the Loans, in whole or in part upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M. three (3) Business Days prior thereto, in the case of Eurodollar Loans, and no later than 10:00 A.M. one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; provided further that if such notice of prepayment indicates that such prepayment is conditioned on the occurrence of a transaction, such notice of prepayment may be revoked if such transaction is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans shall be in an aggregate principal amount of $1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans and Revolving Loans shall be in an aggregate principal amount of $100,000 or a whole multiple thereof. Amounts to be applied in connection with prepayments made pursuant to this Section 2.11 shall be applied to Term Loans in accordance with Section 2.18(b).

(b) No amount of outstanding Loans shall be prepaid by the Borrower pursuant to Section 2.11(a) prior to the first anniversary of the Closing Date unless the Borrower pays to the Administrative Agent (for the ratable benefit of the Term Lenders), contemporaneously with the prepayment of such Loans, a prepayment fee equal to 1.00% of the aggregate amount of the Loans so

prepaid. Any such Loan prepayment fee shall be fully earned on the date paid and shall not be refundable for any reason; provided that in the event that (1) such prepayment pursuant to Section 2.11(a) occurs as a result of a refinancing of all of the outstanding Obligations (a "***Refinancing***") and (2) SVB acts as the sole and exclusive administrative agent and collateral agent for such Refinancing, then any Lender participating in such Refinancing shall not be entitled to any portion of the prepayment premium, and the amount of the total prepayment premium shall be reduced accordingly.

2.12 Mandatory Prepayments.

(a) [reserved].

(b) If any Indebtedness shall be incurred by any Group Member (excluding any Indebtedness incurred in accordance with Section 7.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and other amounts as set forth in Section 2.12(e). Contemporaneously with the prepayment of the Term Loans pursuant to this Section 2.12(b) prior to the first anniversary of the Closing Date, the Borrower shall pay to the Administrative Agent (for the ratable benefit of the Lenders), a prepayment fee equal to 1.00% of the aggregate amount of the Term Loans so prepaid. Any such Term Loan prepayment fee shall be fully earned on the date paid and shall not be refundable for any reason; provided that in the event that (i) such prepayment occurs as a result of a Refinancing and (ii) SVB acts as the sole and exclusive administrative agent and collateral agent for such Refinancing, then any Lender participating in such Refinancing shall not be entitled to any portion of the prepayment premium, and the amount of the total prepayment premium shall be reduced accordingly.

(c) If on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied on such date toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e); provided that on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e).

(d) [reserved].

(e) Amounts to be applied in connection with prepayments made pursuant to this Section 2.12 shall be applied first to the prepayment of installments due in respect of the Term Loans on a pro rata basis and in accordance with Sections 2.3 and 2.18(b) and second to repay outstanding Revolving Loans and Swingline Loans in accordance with Section 2.18(c) (with no corresponding permanent reduction in the Revolving Commitments) (provided that any Term Lender may decline any such prepayment (the aggregate amount of all such prepayments declined in connection with any particular prepayment, collectively, the "***Declined Amount***")), in which case the Declined Amount shall be distributed first, to the prepayment, on a *pro rata* basis, of the Term Loans held by Term Lenders that have elected to accept such Declined Amounts; and second, to the extent of any residual, if no Term Loans remain outstanding, to the prepayment of the Revolving Loans and Swingline Loans in accordance with Section 2.18(c) (with no corresponding permanent reduction in the Revolving Commitments). Each prepayment of the Loans under this Section 2.12 (except in the case of Revolving Loans that are ABR Loans and Swingline Loans, in the event all Revolving Commitments have not been terminated) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. The Borrower shall deliver to the Administrative Agent and each Term Lender notice of each prepayment of Term Loans in whole or in part pursuant to this Section 2.12 not less than five (5) Business Days prior to the date such prepayment shall be made (each, a "***Mandatory Prepayment Date***"). Such notice shall set forth (i) the Mandatory Prepayment Date, (ii) the aggregate amount of such prepayment and (iii) the options of each

Term Lender to (x) decline or accept its share of such prepayment and (y) to accept Declined Amounts. Any Term Lender that wishes to exercise its option to decline such prepayment or to accept Declined Amounts shall notify the Administrative Agent by facsimile not later than three (3) Business Days prior to the Mandatory Prepayment Date.

(f) The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.12, (i) a certificate signed by a Responsible Officer setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) to the extent practicable, at least ten (10) days' prior written notice of such prepayment (and the Administrative Agent shall promptly provide the same to each Lender). Each notice of prepayment shall specify the prepayment and the principal amount of each Loan (or portion thereof) to be prepaid.

(g) No prepayment fee shall be payable in respect of any mandatory prepayments made pursuant to this Section 2.12, other than pursuant to Section 2.12(b).

2.13 Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. at least two Business Days preceding the proposed conversion date; provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice in a Notice of Conversion/Continuation to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing; provided further that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso, such Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.14 Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to $1,000,000 or a whole multiple of $100,000 in excess thereof, and (b) no more than seven (7) Eurodollar Tranches shall be outstanding at any one time.

2.15 Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to (i) the Eurodollar Rate determined for such Interest Period plus (ii) the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, all outstanding Loans, shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00% (the "***Default Rate***"); provided that the Default Rate shall apply to all outstanding Loans automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand.

2.16 Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate (or, as applicable, on the basis of the Eurodollar Rate), the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate (and, as applicable, of the determination of the Eurodollar Rate applicable to an ABR Loan). Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

2.17 Inability to Determine Interest Rate.

(a) If prior to the first day of any Interest Period (or as applicable, on any day on which an ABR Loan bearing interest determined by reference to the Eurodollar Rate is outstanding), the Administrative Agent or the Required Lenders shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) in connection with any request for a Eurodollar Loan, a request for an ABR Loan to bear interest with reference to the Eurodollar Rate, or a conversion to or a continuation thereof that, by reason of circumstances affecting the relevant market, (i) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such requested Loan or conversion or continuation, as applicable, (ii) adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or (iii) the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period, then, in any such case (i), (ii) or (iii), the Administrative Agent shall promptly notify the Borrower and the relevant Lenders thereof as soon as practicable thereafter. Any such determination shall specify the basis for such determination and shall, in the absence of manifest error, be conclusive and binding for all purposes. Thereafter, (w) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as ABR Loans, (x) any such requested ABR Loans which were to have utilized a Eurodollar Rate component in determining the ABR shall not utilize a

Eurodollar Rate component in determining the ABR applicable to such requested ABR Loan, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as ABR Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans, and the utilization of the Eurodollar Rate component in determining the ABR shall be suspended.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section titled "Benchmark Replacement Setting"), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (1) if a Benchmark Replacement is determined in accordance with clause (a)(i) or (a)(ii) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (2) if a Benchmark Replacement is determined in accordance with clause (a)(iii) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m., New York City time, on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(B) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (iv) below, and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17(b) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or the Eurodollar Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Loan of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

2.18 Pro Rata Treatment and Payments.

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments shall be made *pro rata* according to the respective Term Percentages, L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders.

(b) Except as otherwise provided herein, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. The amount of each principal prepayment (whether optional or mandatory) of the Term Loans shall be applied to reduce the then remaining installments of the Term Loans on a *pro rata* basis based upon the respective

then remaining principal amounts thereof. Except as otherwise may be agreed by the Borrower and the Required Lenders, any prepayment of the Term Loans shall be applied to the then outstanding Term Loans on a *pro rata* basis regardless of Type. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M. on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the

amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1, Section 5.2 or Section 5.3 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Term Loans, (ii) make Revolving Loans, (iii) fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iv) fund its respective Swingline Participation Amount of any Swingline Loan, and (v) make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Term Percentage, Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall (a) notify the Administrative Agent of the receipt of such payment, and (b) within five (5) Business Days of such receipt purchase (for cash at face value) from the other Term Lenders, Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Term Loans or Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Term Percentages, Revolving Percentages or L/C Percentages, as applicable; provided, however, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made

by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any of its Affiliates (as to which the provisions of this paragraph shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Term Lenders, the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation. For the avoidance of doubt, no amounts received by the Administrative Agent or any Lender from any Guarantor that is not a Qualified ECP Guarantor shall be applied in partial or complete satisfaction of any Excluded Swap Obligations.

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.3 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

2.19 Illegality; Requirements of Law.

(a) Illegality. If any Lender reasonably determines that any Requirement of Law has made it unlawful, or that any Governmental Authority having jurisdiction over a Lender, Group Member, or this Agreement has asserted that it is unlawful, for such Lender to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority having applicable jurisdiction has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the ABR, the interest on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the ABR, in each case, until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such

notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the ABR), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest based upon the Eurodollar Rate, the Administrative Agent shall, during the period of such suspension compute the ABR applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority having jurisdiction over a Lender, Group Member, or this Agreement, or the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any such Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be, in the reasonable judgment of the Lender, to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans determined with reference to the Eurodollar Rate or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing, maintaining or participating in Letters of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum receivable or received by such Lender or other Recipient hereunder in respect thereof (whether of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrower will promptly pay such Lender or other Recipient, as the case may be, any additional amount or amounts necessary to compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender reasonably determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit

or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case (i) and (ii) be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this Section 2.19, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.19 for any amounts incurred more than nine (9) months prior to the date that such Lender notifies the Borrower of the change in the Requirement of Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this Section 2.19 shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

2.20 Taxes.

For purposes of this Section 2.20, the term "Lender" includes the Issuing Lender and the term "applicable Requirement of Law" includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Requirements of Law, and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable Requirement of Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with such applicable Requirement of Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and the Borrower shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with any applicable

Requirement of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (subject to adjustments for Taxes pursuant to subsection (g) below). A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by an applicable Requirement of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the

Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), copies of an executed original IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, copies of an executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) copies of an executed original IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) copies of an executed original IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the

Administrative Agent), copies of any other executed form prescribed by an applicable Requirement of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by such applicable Requirement of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by such applicable Requirement of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) On or before the date it becomes a party to this Agreement, any Administrative Agent that is a U.S. Person shall deliver to the Borrower two duly completed copies of IRS Form W-9, or any subsequent versions or successors to such form, certifying that such Administrative Agent is exempt from U.S. federal backup withholding. Any Administrative Agent, and any successor or supplemental Administrative Agent, that is not a U.S. Person for U.S. federal income tax purposes, shall deliver to the Borrower (i) copies of an executed original IRS Form W-8IMY certifying that, with respect to such payments received by it (on behalf of the Lenders) from the Loan Parties, it is a "U.S. branch" within the meaning of U.S. Treasury Regulations Section 1.1441-1(b)(2)(iv)(A) and (ii) with respect to payments received for its own account, copies of an executed original IRS Form W-8ECI.

(iv) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.20(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.20(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.20(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional

amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the Discharge of Obligations.

2.21 Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) a default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) a default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) for any reason, the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such losses and expenses shall be equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, reduced, converted or continued, for the period from the date of such prepayment or of such failure to borrow, reduce, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, reduce, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest or other return for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any), over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the Discharge of Obligations.

2.22 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts to designate a different lending office for funding or booking its Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.19 or 2.20, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender; provided that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

2.23 Substitution of Lenders. Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender (any such Lender described in clauses (a) through (c) below being referred to as an "***Affected Lender***" hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19(b) or Section 2.19(c) (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender's Loans and Commitment; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment (the replacing Lender or lender in (i) or (ii) being a "***Replacement Lender***"); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected Lender's Loan and/or Commitment (or any portion thereof) by a Lender or Replacement Lender, as the case may be, on a date other than the last day of the applicable Interest Period with respect to any Eurodollar Loans then outstanding; and provided further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clause (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender's Loans and Commitment upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

2.24 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Deposit Account and released *pro rata* to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, Issuing Lender or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, Issuing Lender or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.3 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender

to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each Non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each Non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that the aggregate obligations of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans of that Lender plus the aggregate amount of that Lender's L/C Percentage of then outstanding Letters of Credit plus the aggregate amount of such Lender's pro rata percentage of the then outstanding Swingline Loans. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages, L/C Percentages, and Term Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the

Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

2.25 [Reserved].

2.26 Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

2.27 Incremental Loans.

(a) Term Loans. At any time commencing on the Closing Date until the Term Loan Maturity Date, subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Revolving Commitments, not more than five (5) increases in the aggregate) to the Term Loan Commitment or fundings of new Term Loans from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent and the Borrower (each, an "***Incremental Term Loan***"), in an aggregate amount for all such Incremental Term Loans and any Incremental Revolving Commitments, not to exceed $70,000,000. Any Incremental Term Loan shall be in the amount of at least $5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)) and integral multiples of $1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)).

(b) Revolving Loans. At any time during the Revolving Commitment Period, subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Term Loans, not more than five (5) increases in the aggregate) to the Revolving Commitment from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent, the Issuing Lender, the Swingline Lender and the Borrower (the "***Incremental Revolving Commitment***"), in an aggregate amount for all such Incremental Revolving Commitments and any Incremental Term Loans, not to exceed $70,000,000. Any Incremental Revolving Commitment shall be in the amount of at least $5,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)) and integral multiples of $1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)).

(c) Lender Election to Increase; Prospective Lenders. At the time of sending such notice in accordance with clauses (a) or (b) above, the Borrower shall specify the time period (such period, the "***Election Period***") within which each Lender is requested to respond (which Election Period shall in no event be less than five (5) Business Days from the date of delivery of such notice to the Administrative Agent), and the Administrative Agent shall promptly thereafter notify each Lender of the Borrower's request for such Incremental Term Loan and/or such Incremental Revolving Commitment and the Election Period during which each Lender is requested to respond to such Borrower request; provided that if such notice indicates that it is conditioned upon the occurrence of a specified event, such notice may be revoked if such event does not occur prior to the requested funding date. Each Term Lender shall have the right to participate in any Incremental Term Loan in accordance with its pro rata share of the then-existing Term Loans, and each Revolving Lender shall have the right to participate in any Incremental Revolving

Commitment in accordance with its pro rata share of the then-existing Revolving Commitments. No Term Lender shall be obligated to participate in any Incremental Term Loan, and no Revolving Lender shall be obligated to participate in any Incremental Revolving Commitment, and each such Lender's determination to participate shall be in such Lender's sole and absolute discretion. Any Lender not responding by the end of such Election Period shall be deemed to have declined to increase its respective Revolving Commitment or Term Commitment or to participate in the funding of a new Term Loan, as applicable. To the extent sufficient Term Lenders (or their Affiliates) or Revolving Lenders (or their Affiliates), as applicable, do not agree to provide an Incremental Term Loan or Incremental Revolving Commitment, as applicable, on terms acceptable to the Borrower, the Borrower may invite any prospective lender that satisfies the criteria of being an "Eligible Assignee" and is reasonably satisfactory to the Administrative Agent to become a Lender.

(d) Effective Date and Allocations. If any Incremental Revolving Commitment or an Incremental Term Loan is extended in accordance with this Section 2.27, the Administrative Agent and the Borrower shall determine the effective date (the "***Increase Effective Date***") and the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable and the Increase Effective Date.

(e) Each of the following shall be the only conditions precedent to the making of an Incremental Term Loan or Incremental Revolving Commitment:

(i) The Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of each such Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Revolving Commitment or Incremental Term Loan, together with recently dated good standing certificates from each Loan Party's jurisdiction of organization, and customary opinions of counsel, in form and substance reasonably satisfactory to the Administrative Agent.

(ii) Immediately after giving pro forma effect to the extension of such Incremental Facility, each of the conditions precedent set forth in Section 5.3(a) shall be satisfied (other than in connection with Limited Condition Acquisitions, in which case (i) Section 5.3(a) shall be satisfied only in connection with the Specified Representations and (ii) the Specified Acquisition Agreement Representations shall be true and correct on the Increase Effective Date, but only to the extent that the Borrower (or any of its Affiliates) has the right (taking into account any applicable cure provisions) to terminate its (or such Affiliates') obligations under the Limited Condition Acquisition, or to decline to consummate the Limited Condition Acquisition Agreement (in each case, in accordance with the terms thereof) as a result of a breach of such Specified Acquisition Agreement Representations.

(iii) Immediately after giving pro forma effect to the extension of such Incremental Facility, no Default or Event of Default shall have occurred and be continuing (other than in connection with Limited Condition Acquisitions, in which case there shall be (x) no Default or Event of Default as of the LCA Test Date and (y) no Event of Default under Section 8.1(a) or (f) immediately after giving pro forma effect to the making of such Incremental Term Loan.

(iv) The Borrower shall be in pro forma compliance with the then applicable financial covenants set forth in Section 7.1 as of the end of the most recently ended fiscal quarter for which financial statements of the Borrower were required to have been delivered in accordance with the terms hereof immediately after giving effect to the making of such Incremental Term Loan or extension of such Incremental Revolving Commitment and the use of proceeds thereof (calculated as though any new

Incremental Revolving Commitment and then existing Revolving Commitments are fully funded, and without netting Qualified Cash from the proceeds of the new Incremental Revolving Commitment or Incremental Term Loan) (provided that in the case of a Limited Condition Acquisition, such calculations shall be made in compliance with Section 1.4).

(v) Each Lender agreeing to participate in any such Incremental Facility, the Borrower and the Administrative Agent shall have signed an Incremental Joinder (any Incremental Joinder may, with the consent of the Administrative Agent, the Borrower and the Lenders agreeing to participate in such Incremental Facility, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.27) and the Borrower shall have executed any Notes requested by any Lender in connection with the incurrence of the Incremental Facility. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Incremental Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby, shall not require the consent of any Lender other than the Lender(s) agreeing to participate in such Incremental Facility.

(vi) The Borrower shall have paid to the Administrative Agent any fees required to be paid pursuant to the terms of the Fee Letter, and shall have paid to any Lender providing such Incremental Term Loan or Incremental Revolving Commitments any fees required to be paid to such Lender in connection with the increased Revolving Commitment (or in the case of a new Lender, such new Revolving Commitment) or increased Term Commitment, as applicable (or in the case of a new Lender, such new Term Commitment) hereunder (in each case, unless otherwise waived by the applicable party).

(vii) With respect to any increase in the Revolving Commitment, all outstanding Loans, participations hereunder in Letters of Credit and participations hereunder in Swingline Loans held by each Revolving Lender shall be reallocated among the Revolving Lenders (including any newly added Revolving Lenders) in accordance with the Revolving Lenders' respective revised Revolving Percentages and L/C Percentages, pursuant to procedures reasonably determined by the Administrative Agent in consultation with the Borrower.

(f) Distribution of Revised Commitments Schedule. The Administrative Agent shall promptly distribute to the parties an amended Schedule 1.1A (which shall be deemed incorporated into this Agreement), to reflect any such changes in the Revolving Commitments or Term Commitments, if applicable of the existing Lenders, or the addition of any new Lenders and their respective Revolving Commitment amounts or Term Commitment amounts, as applicable, and the respective Revolving Percentages or Term Percentages, as applicable, resulting therefrom.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or 10.1 to the contrary.

(h) Any additional Revolving Loans made available pursuant to any such Incremental Revolving Commitment shall be treated on the same terms (including with respect to pricing and maturity date) as, and made pursuant to the same documentation as is applicable to, the original Revolving Facility.

(i) The Incremental Term Loans shall, for purposes of prepayments, be treated substantially the same as the Term Loans funded on the Closing Date and shall have the same terms as the then existing Term Loans, except as may be mutually agreed among the Borrower, the Administrative Agent and the Lenders providing such Incremental Term Loan; provided, in any case, that (i) no Incremental Term Loan shall have a final maturity date earlier than the Term Loan Maturity Date, (ii) the amortization schedule of any Incremental Term Loan shall not have a weighted average life to maturity shorter than the remaining weighted average life to maturity of the Term Loans funded on the Closing Date,

(iii) any Incremental Term Loan shall rank *pari passu* in right of security in respect of the Collateral and will not be guaranteed by any Person that is not a Guarantor hereunder and shall not be secured by any property or assets of any Group Member other than the Collateral, (iv) to the extent the terms and conditions of such Incremental Term Loan are not substantially identical to the terms and conditions of any then-existing Term Loans, such terms and conditions shall not be more restrictive to the Group Members than the terms of any then-existing Term Loans (it being understood that (1) to the extent that any such more favorable terms are added for the benefit of any corresponding Term Loans or Revolving Commitments, such materially more restrictive terms shall be permitted and (2) any materially more restrictive terms that are only applicable after the Term Loan Maturity Date shall be permitted); and (iv) to the extent the initial yield (including any original issue discount or similar yield-related discounts, deductions or payments but excluding any customary arrangement or commitment fees payable to the Administrative Agent) applicable to the Incremental Term Loan, as applicable, is higher than the initial yield applicable to the Term Loans funded on the Closing Date by more than 0.50%, this Agreement shall be amended to increase the Applicable Margin applicable to the Term Loans funded on the Closing Date, to the extent necessary so that the initial yield applicable to such Incremental Term Loan is no more than 0.50% greater than the initial yield applicable to the Term Loans funded on the Closing Date *(*the "***MFN Protection***").

(j) Effect of Increase. Upon the increase in the Total Revolving Commitments or the funding of an Incremental Term Loan, as applicable, under this Section 2.27, all references in this Agreement and in any other Loan Document to the Revolving Commitment or Loans, as applicable, of any Lender (including any additional lender that becomes a Lender pursuant to Section 2.27(c)) shall be deemed to include any increase in such Lender's Revolving Commitment, Revolving Loans or Incremental Term Loan, as applicable, pursuant to this Section 2.27 and any amendments effected through the applicable Increase Joinder. The Incremental Facilities established pursuant to this Section 2.27 shall constitute Revolving Loans, Revolving Commitments and Term Loans, as applicable, under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents,. The Borrower shall take any actions reasonably required by Administrative Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Incremental Facility.

SECTION 3
LETTERS OF CREDIT

3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit ("***Letters of Credit***") for the account of the Borrower (for the benefit of the Borrower or that of any of its Subsidiaries) on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, the L/C Exposure would exceed either the Total L/C Commitments or the Available Revolving Commitment at such time. Unless otherwise agreed to by the Administrative Agent in its sole discretion, each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above unless Cash Collateralized at a rate of 103% or otherwise backstopped to the reasonable satisfaction of the Administrative Agent and the Issuing Lender).

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.3 shall not then be satisfied (which notice shall contain a description of any such condition asserted not to be satisfied);

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than $250,000; or

(vii) any Lender is at that time a Defaulting Lender unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral, pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower (for the benefit of the Borrower or that of any of its Subsidiaries) by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating

thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

3.3 Fees and Other Charges.

(a) The Borrower agrees to pay, with respect to each Existing Letter of Credit and each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a "***Letter of Credit Fronting Fee***"), (ii) a letter of credit fee equal to the Applicable Margin relating to Revolving Loans that are Eurodollar Loans multiplied by the daily amount available to be drawn under each such Letter of Credit on the drawable amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a "***Letter of Credit Fee***"), in each case payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an "***L/C Fee Payment Date***") after the issuance date of such Letter of Credit, and (iii) the Issuing Lender's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) the Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the "***Issuing Lender Fees***"). All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of three hundred sixty (360) days. During the continuance of an Event of Default, at the request of the Required Lenders, Letter of Credit Fees shall accrue a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00%; provided that such increased fee rate shall apply to all outstanding Letters of Credit automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such fee, if any, payable to the Issuing Lender for its own account.

(e) All fees payable under this Section 3.3 shall be fully earned on the date paid and nonrefundable.

3.4 L/C Participations; Existing Letters of Credit.

(a) **L/C Participations**. The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender's own account and risk an undivided interest equal to such L/C Lender's L/C Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.3, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) **Existing Letters of Credit**. On and after the Closing Date, the Existing Letters of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to Sections 3.3(a) and (b), reimbursement of costs and expenses to the extent provided herein and for purposes of being secured by the Collateral, a Letter of Credit outstanding under this Agreement and entitled to the benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement (which shall control in the event of a conflict).

3.5 Reimbursement.

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than the immediately following Business Day. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds; provided that the Borrower may, subject to the satisfaction of the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose); upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to

Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.3 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a "***Revolving Loan Conversion***"), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.3 are satisfied.

3.6 Obligations Absolute. The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (a) the issuance of any Letter of Credit, or (b) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing Lender or such L/C Lender (as finally determined by a court of competent jurisdiction).

3.7 Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

3.8 Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

3.9 Interim Interest. If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

3.10 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan or Swingline Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, (x) in the case of clause (ii), immediately and, (y) in the case of clause (i) within one (1) Business Day, Cash Collateralize the then effective L/C Exposure in an amount equal to 103% of such L/C Exposure.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 103% of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 103% of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the

applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents including any applicable Cash Management Agreement.

3.11 Additional Issuing Lenders. The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph shall be deemed to be an "***Issuing Lender***" (in addition to being a Lender) in respect of Letters of Credit issued or to be issued by such Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Lender and such Lender.

3.12 Resignation of the Issuing Lender. The Issuing Lender may resign at any time by giving at least thirty (30) days' prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

3.13 Applicability of UCP and ISP. Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to (a) with respect to standby Letters of Credit, the rules of the ISP, and (b) with respect to commercial Letters of Credit, the rules of the Uniform Customs and Practice for Documentary Credits, as published in its most recent version by the International Chamber of Commerce on the date any commercial Letter of Credit is issued.

SECTION 4
REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans and issue the Letters of Credit, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to themselves and each other Group Member, that:

4.1 Financial Condition.

(a) The Projected Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Projected Pro Forma Financial Statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein and except for the absence of footnotes and subject to year-end adjustments for unaudited financial statements). The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) The audited consolidated balance sheet of the Group Members as of June 30, 2020 presents fairly in all material respects the consolidated financial condition of the Group Members as at such date. The unaudited consolidated balance sheet of the Group Members as of September 30, 2020 and December 31, 2020, and the related unaudited consolidated statements of income and cash flows for the three and six month periods ended on such dates, present fairly in all material respects the consolidated financial condition of the Group Members as at such date, and the consolidated results of their operations and its consolidated cash flows for the three and six month periods then ended (subject to normal year-end audit adjustments). No Group Member has, as of the Effective Date, any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from June 30, 2020 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property and not disclosed in the financial statements referred to in this paragraph.

4.2 No Change. Since June 30, 2020, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Existence; Compliance with Law. Each Group Member (a) is duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing (if applicable) under the laws of each jurisdiction, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect and (d) is in material compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

4.4 Power, Authorization; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described on Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the extensions of credit hereunder and the use of the proceeds thereof will not violate any Requirement of Law, Operating Documents or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law, Operating Document or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Group Member has violated any Requirement of Law or violated or failed to comply with any Contractual Obligation applicable to the Group Members that if violated or not complied with could reasonably be expected to have a Material Adverse Effect.

4.6 Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Loan Party, threatened by or against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7 No Default. No Group Member is in default under or with respect to any of its Contractual Obligations in any respect, except where such default could not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either result from the making of a requested credit extension.

4.8 Ownership of Property; Liens; Investments. Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property, and none of such property is subject to any Lien except as permitted by Section 7.3.

4.9 Intellectual Property. Except as could not reasonably be expected to have a Material Adverse Effect, (a) each Group Member owns, or has the right to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (b) no claim has been asserted in writing and is pending by any Person challenging the use or the validity of any Group Member's Intellectual Property, nor does any Loan Party know of any valid basis for any such claim; and (c) to the knowledge of any Loan Party, the use of Intellectual Property by each Group Member, and the conduct of such Group Member's

business, as currently conducted, does not infringe on or otherwise violate the Intellectual Property rights of any Person, and there are no claims pending or threatened in writing to such effect.

4.10 Taxes. Each Group Member has, after giving effect to any extensions granted or grace periods in effect, filed or caused to be filed all Federal, material state and other material tax returns that are required to be filed and has paid all Taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any Taxes, charges or assessments the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member or where the amount is less than $1,000,000 in the aggregate).

4.11 Federal Regulations. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of "buying" or "carrying" "margin stock" (within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect) or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for buying or carrying any such margin stock or for extending credit to others for the purpose of purchasing or carrying margin stock in violation of Regulations T, U or X of the Board. If any margin stock directly or indirectly constitutes Collateral securing the Obligations, if requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12 Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Group Members, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13 ERISA.

(a) [reserved];

(b) except as in the aggregate could not reasonably be expected to have a Material Adverse Effect, the Borrower and its ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA with respect to each Plan, and have performed all their obligations under each Plan;

(c) except as in the aggregate could not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur;

(d) except as in the aggregate could not reasonably be expected to have a Material Adverse Effect, the Borrower and each of its ERISA Affiliates have met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(e) [reserved];

(f) except as in the aggregate could not reasonably be expected to have a Material Adverse Effect and except to the extent required under Section 4980B, or as described on Schedule 4.13,

of the Code, no Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any of its ERISA Affiliates;

(g) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not result in material liability for the Borrower and each ERISA Affiliate;

(h) except as in the aggregate could not reasonably be expected to have a Material Adverse Effect, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(i) all liabilities under each Plan are (i) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing the Plans, except as in the aggregate could not reasonably be expected to have a Material Adverse Effect, (ii) insured with a reputable insurance company, or (iii) (A) provided for or recognized in all material respects in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (B) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto;

(j) [reserved]; and

(k) (i) the Borrower is not and will not be a "plan" within the meaning of Section 4975(e) of the Code; (ii) the assets of the Borrower do not and will not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101 as modified by ERISA Section 3(42); (iii) the Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to governmental plans.

4.14 Investment Company Act; Other Regulations. No Loan Party is an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

4.15 Subsidiaries. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Effective Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party, (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Group Member, except as may be created by the Loan Documents, the 2022 Notes and the 2026 Notes and (c) no Immaterial Subsidiary fails to satisfy the limitations set forth in the definition thereof.

4.16 Use of Proceeds. The proceeds of the Loan made on the Closing Date shall be used to refinance the obligations of the Borrower outstanding under the Existing Credit Facilities and to partially pay payment or redemption of all or substantially all of the 2022 Notes, to pay related fees and expenses,

and for ongoing working capital and general corporate purposes. All or a portion of the proceeds of the Revolving Loans, Swingline Loans, Incremental Facilities and the Letters of Credit made after the Closing Date, shall be used to provide for ongoing working capital and general corporate purposes and to pay related fees and expenses.

4.17 Environmental Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) except as disclosed on Schedule 4.17, the facilities and properties owned, leased or operated by any Group Member (the "***Properties***") do not contain, and to the knowledge of the Loan Parties, have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could reasonably be expected to give rise to liability under, any Environmental Laws;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability of or by any Group Member regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the "***Business***"), nor does any Group Member have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could reasonably be expected to give rise to liability under, any Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of any Group Member, threatened, under any Environmental Law to which any Group Member is or, to the knowledge of any Group Member, will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under Environmental Laws;

(f) the Properties and all operations of the Group Members at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and except as set forth on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) no Group Member has incurred any liability that it has assumed from any other Person under Environmental Laws.

4.18 Accuracy of Information, etc. No statement or information (other than projections, other forward-looking information and industry information) contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, written information, document or certificate was so furnished and taken as a whole (including any supplemental information), any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The projections and *pro forma* financial information contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished by or on behalf of any Loan

Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 Security Documents.

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law)) security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock (as defined in the Guarantee and Collateral Agreement) that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction ("***Certificated Securities***"), when certificates representing such Pledged Stock (which, in the case of certificated securities in registered form, are indorsed to the Administrative Agent or in blank by an effective indorsement) are delivered to the Administrative Agent, and in the case of the other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements, Intellectual Property Security Agreements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the USPTO and USCRO and the offices specified on Schedule 4.19(a), as applicable (to the extent a security interest may be perfected by such filing), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3). As of the Closing Date, none of the Capital Stock of any Group Member that is a limited liability company or partnership has any Capital Stock that is a Certificated Security and included in the Collateral.

(b) Each of the Mortgages delivered after the Closing Date will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law)) Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan

Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

4.20 Solvency; Voidable Transaction. The Group Members (when taken as a whole), and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, will be Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party

4.21 Regulation H. No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

4.22 Designated Senior Indebtedness. The Loan Documents and all of the Obligations have been deemed "Designated Senior Indebtedness" or a similar concept thereto for purposes of any other Indebtedness for borrowed money of the Loan Parties, to the extent that the agreements governing such other Indebtedness includes such concept.

4.23 Regulatory Matters.

(a) (i) The businesses of the Borrower has been and is being conducted in compliance in all material respects with all applicable Healthcare Laws, and all Permits, (ii) each Product (whether manufactured by the Borrower or any of its Subsidiaries, any of their respective Affiliates or by a third party manufacturer under contract to the Borrower or any of its Subsidiaries) has been, and currently is, being researched, developed, designed, investigated, manufactured, made, assembled, stored, packaged, labeled, marketed and distributed by the Borrower and its Subsidiaries or third parties on their behalf, in compliance with all applicable Requirements of Law, including, without limitation, the Healthcare Laws, all required Permits, cGMP, QSR, the Device Master Record as defined in 21 CFR 820.181 and Document Controls under 21 CFR 820.40 and all Product specifications as established in the Group Members' documentation, except to the extent any failure to so comply could not reasonably be expected to result in any adverse consequences to the Loan Parties (other than immaterial consequences), (iii) each contract between the Borrower and any of its Subsidiaries on the one hand, and any third party manufacturer on the other hand contain (and the Borrower and each of its Subsidiaries implement), appropriate quality assurance arrangements in accordance with FDA requirements and comply in all material respects with all applicable Healthcare Laws, (iv) the Borrower and its Subsidiaries are in compliance in all material respects with applicable Requirements of Law governing reporting and recordkeeping of Product modifications, adverse event reporting, reporting of corrections and removals, and recordkeeping for each Product, and all manufacturing and release documents and records are true and accurate in all material respects, and (v) neither the Borrower nor any of its Subsidiaries has received or been subject to any written or oral communications from the FDA, the NRC or any other Governmental Authority asserting that the Borrower, any such Subsidiary or any such Product was not in compliance in any material respect with any applicable Requirement of Law or any Permit.

(b) Other than routine surveillance audits and inspections, no investigation by any Governmental Authority with respect to the Borrower or any of its Subsidiary is pending or, to the knowledge of the Loan Parties, threatened. None of the Borrower or any of its Subsidiaries has received any written or oral communication from any Governmental Authority of any noncompliance with any Requirement of Law or any written or oral communication from any Governmental Authority or accrediting

organization of any material issues, problems, or concerns regarding the quality or performance of the Products.

(c) The Borrower and its Subsidiaries own, free and clear of all Liens, except Liens securing the Obligations, all Permits, including all authorizations under the FD&C Act, other United States federal laws, and all applicable state and foreign laws, necessary (i) for the research and development and commercialization of the Products, including, without limitation, all Permits necessary in connection with testing, manufacturing, marketing or selling of such Products, as such testing, manufacturing, marketing or selling are currently being conducted, and (ii) to carry on the business of the Borrower and each of its Subsidiaries. All such Permits are valid and in full force and effect and the Borrower and each Subsidiary is in compliance in all material respects with all terms and conditions of such Permits. None of the Borrower or any Subsidiary has received any written notice from any Governmental Authority that any Permit has been or is being revoked, withdrawn, suspended or challenged or that such Governmental Authority is conducting an investigation or review thereof or has issued any order or recommendation stating that the development, testing and/or manufacturing of such Product should cease or that such Product should be withdrawn from the marketplace.

(d) Except as could not reasonably be expected to have a materially adverse impact on the Borrower and its Subsidiaries, there have been no adverse clinical test results and there have been no Product recalls or voluntary Product Market Withdrawals from any market (other than those recalls or Market Withdrawals disclosed on Schedule 4.23(d)).

(e) There has been no material untrue statement of fact and no fraudulent statement made by the Borrower or any of its Subsidiaries or any of their respective agents or representatives to the FDA, NRC, or any other Governmental Authority, and there has been no failure to disclose any material fact required to be disclosed to the FDA, NRC or any other Governmental Authority.

(f) To the best knowledge of the Loan Parties, no insurance company, managed care organization or Governmental Authority has (i) terminated coverage or reimbursement for procedures and treatments performed using the CyberKnife and TomoTherapy Products, or (ii) reduced the scope of coverage or the rate of reimbursement it provides for procedures and treatments performed using the CyberKnife and TomoTherapy Products, and, in the case of this clause (ii), such reduction could reasonably be expected to have a materially adverse impact on the revenues of the Borrower and its Subsidiaries. None of the Borrower or any of its Subsidiaries has been the subject of any "for cause" inspection, investigation or audit by any Governmental Authority in connection with any alleged improper activity.

(g) There is no arrangement relating to the Borrower or any of its Subsidiaries providing for any rebates, kickbacks or other forms of compensation or remuneration that are unlawful to be paid to any Person to induce, or in return for obtaining or the referral of business or for the arrangement for recommendation of such referrals. All billings by the Borrower and each of its Subsidiaries for its services have been true and correct in all material respects and are in compliance in all material respects with all applicable Healthcare Laws.

(h) None of the Borrower or any of its Subsidiaries, or, to the knowledge of the Loan Parties, any individual who is an officer, director, employee or manager of the Borrower or any of its Subsidiaries has been convicted of, charged with or, to the knowledge of the Loan Parties, investigated for any federal or state health program- related offense or been excluded or suspended from participation in any such program; or, to the knowledge of the Loan Parties, within the past five (5) years, has been convicted of, charged with or, to the knowledge of the Loan Parties, investigated for a violation of any Requirement of Law related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances, or has been subject to any judgment,

stipulation, order or decree of, or criminal or civil fine or penalty imposed by, any Governmental Authority related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances. None of the Borrower or any of its Subsidiaries or, to the knowledge of the Loan Parties, any individual who is an officer, director, employee or manager of the Borrower or any of its Subsidiaries has been convicted of any crime or engaged in any conduct including but not limited to any misrepresentation to any Governmental Authority or that has otherwise resulted or would reasonably be expected to result in a debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) any similar applicable Requirement of Law. No debarment proceedings or investigations in respect of the business of the Borrower or any of its Subsidiaries are pending or, to the knowledge of the Loan Parties, threatened against the Borrower or any of its Subsidiaries or any individual who is an officer, director, employee or manager of the Borrower or any of its Subsidiaries.

(i) All studies, tests and preclinical and clinical trials conducted relating to the Products, sponsored by the Borrower or any of its Subsidiaries have been conducted, and are currently being conducted, in all material respects in accordance with all applicable Requirement of Law and IDEs, including procedures and controls pursuant to, where applicable, current good clinical practices and current good laboratory practices and other applicable laws, rules regulations. To the extent required by applicable Requirement Law, the Borrower and each of its Subsidiaries has obtained all necessary authorizations from Governmental Authorities and IECs, including an IDE for the conduct of any clinical investigations conducted by or on behalf of the Borrower or such Subsidiary, as applicable.

(j) To the knowledge of the Loan Parties, none of the clinical investigators in any clinical trial sponsored by the Borrower or any of its Subsidiaries has been or is disqualified or otherwise sanctioned by the FDA, the Department of Health and Human Services, or any Governmental Authority and, to the knowledge of the Loan Parties, no such disqualification, or other sanction of any such clinical investigator is pending or threatened. None of the Borrower or any of its Subsidiaries has received from the FDA or other applicable Governmental Authority any notices or correspondence requiring or threatening the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials with respect to or in connection with the Products.

(k) The Group Members are, to the extent directly applicable to the Group Members, currently conducting its business in material compliance with all regulations promulgated under HIPAA. To the extent the Group Members create any de-identified protected health information, the Group Members do so in compliance with the HIPAA regulations. The Group Members have not failed to notify any individual or required third party, including any appropriate Governmental Authority, of an event that triggered a notification or reporting requirement under any contract to which a Group Member is a party, or any applicable requirement related to the unauthorized access, use or disclosure of protected health information. The Group Members have no knowledge of any complaints to or investigations by any Governmental Authority with respect to HIPAA compliance by the Group Members, have not received any notice or audit request from the United States Department of Health and Human Services Office for Civil Rights, is currently conducting their businesses in material compliance with all applicable laws governing the privacy, security or confidentiality of protected health information and/or other records generated in the course of providing or paying for health care services, including without limitation, all laws to the extent not preempted by HIPAA, and has conducted its businesses in material compliance with such laws since such laws first became applicable to it.

4.24 Insurance. All insurance maintained by the Loan Parties is in full force and effect, all premiums have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance beyond any applicable grace period (in each case, except to the extent such default could not reasonably be expected to be materially adverse to the Lenders or result in cancellation of such party or a reduction in coverage thereunder). Each Loan Party

maintains insurance with what, to the knowledge of such Loan Party, are financially sound and reputable insurance companies on its property in at least such amounts and against at least such risks (but including in any event public liability, product liability, and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

4.25 **No Casualty**. No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting its property that could reasonably be expected to have a Material Adverse Effect.

4.26 **[Reserved]**.

4.27 **[Reserved]**.

4.28 **OFAC**. No Group Member, nor, to the knowledge of any such Group Member, any director, officer, employee, agent, affiliate, advisor or representative thereof, is an individual or an entity that is, or is owned or controlled by an individual or entity that is (a) currently the subject of any Sanctions, or (b) located, organized or resident in a Designated Jurisdiction.

4.29 **Anti-Corruption Laws**. Each Group Member has conducted its businesses in compliance in all material respects with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

SECTION 5
CONDITIONS PRECEDENT

5.1 **Conditions to Effectiveness**. This Agreement shall be effective and valid and binding on each party hereto, subject to the satisfaction of each of the following conditions on or prior to the Effective Date:

(a) Loan Documents. The Administrative Agent shall have received a copy of this Agreement, executed and delivered by the Administrative Agent, Borrower and each Lender listed on Schedule 1.1A.

(b) Pro Forma Financial Statements; Financial Statements; Projections. The Lenders shall have received the Projected Pro Forma Financial Statements, and the other financial statements described in Section 4.1.

(c) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents, the consummation of the transactions contemplated hereby, shall have been obtained and be in full force and effect.

(d) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (A) the Operating Documents of such Loan Party certified, in the case of formation documents, as of a recent date by the secretary of state or similar official of the relevant jurisdiction of organization of such Loan Party, (B) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents

to which such Loan Party is party and (C) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (ii) a long form good standing certificate for each Loan Party from its respective jurisdiction of organization and (iii) a certificate of foreign qualification from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect.

(e) Responsible Officer's Certificates.

(i) The Administrative Agent shall have received a certificate signed by a Responsible Officer, in form and substance reasonably satisfactory to it, either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required.

(f) Patriot Act, etc. The Administrative Agent and each Lender shall have received, prior to the Effective Date, all documentation and other information requested to comply with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act, and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(g) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Loan Party, threatened, that could reasonably be expected to have a Material Adverse Effect.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has executed and released its signature page to this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Effective Date specifying such Lender's objection thereto and either such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Effective Date.

5.2 Conditions to Initial Extension of Credit. The obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction or waiver, prior to or concurrently with the making of such extension of credit on the Closing Date, of the following conditions precedent, provided that such conditions have been satisfied (or otherwise waived by the Administrative Agent and all of the Lenders) on or before May 20, 2021 (and if the following conditions are not satisfied, all commitments and obligations to extend credit hereunder shall terminate):

(a) Effective Date. The Effective Date shall have occurred.

(b) Loan Documents. The Administrative Agent shall have received each of the following, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent:

(i) the Collateral Information Certificate, executed by a Responsible Officer;

(ii) if required by any Term Lender, a Term Loan Note executed by the Borrower in favor of such Term Lender;

(iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;

(iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;

(v) the Guarantee and Collateral Agreement, executed and delivered by each Grantor named therein;

(vi) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto;

(vii) each other Security Document, executed and delivered by the applicable Loan Party party thereto; and

(viii) the Flow of Funds Agreement.

(c) Issuance of 2026 Notes. Borrower shall have issued the 2026 Notes on terms and conditions substantially similar to the 2022 Notes or otherwise reasonably acceptable to the Administrative Agent (it being understood that the draft shared with the Administrative Agent, dated May 5, 2021, is reasonably acceptable), and the refinancing of the Existing Credit Facilities and 2022 Notes shall have occurred, other than with respect to not more than $10,000,000 of principal of the 2022 Notes.

(d) Responsible Officer's Certificates. The Administrative Agent shall have received a certificate signed by a Responsible Officer, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.3(a) and (e) have been satisfied, and (B) that there has been no event or circumstance since June 30, 2020 that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect

(e) Payoff Letters, Etc. (A) The Administrative Agent shall have received the MidCap Payoff Letter duly executed by the parties thereto, (B) all obligations of the Group Members in respect of the Existing Credit Facilities shall, substantially contemporaneously with the funding of certain Loan proceeds on the Closing Date directly to the Existing Agent, as contemplated by the Flow of Funds Agreement, have been paid in full, (C) the Administrative Agent shall be satisfied that all actions necessary to terminate the agreements evidencing the obligations of the Group Members in respect of the Existing Credit Facilities and the Liens of the Existing Agent in the assets of the Group Members securing obligations under the Existing Credit Facilities shall have been, or substantially contemporaneously with the Closing Date, shall be, taken, and (D) the Administrative Agent shall have received such other documents and information related to the Existing Credit Facilities and the refinancing thereof as it may request.

(f) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien, judgment and litigation searches reasonably required by the Administrative Agent, and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, or Liens to be discharged on or prior to the Closing Date pursuant to the MidCap Payoff Letter or other documentation satisfactory to the Administrative Agent.

(ii) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received (A) the certificates representing the shares of Capital Stock pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, if any, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Subject to Section 5.4, each document (including any UCC financing statements, Intellectual Property Security Agreements, Deposit Account Control Agreements, Securities Account Control Agreements) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create in favor of the Administrative Agent (for the benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed and delivered to the Administrative Agent or, as applicable, be in proper form for filing, registration or recordation.

(g) Insurance. Except as set forth in Section 5.4, the Administrative Agent shall have received evidence of customary insurance naming the Administrative Agent as an additional insured and/or lender loss payee, as the case may be, under all property and liability insurance policies maintained with respect to the Collateral.

(h) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent) for payment on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the Flow of Funds Agreement.

(i) Legal Opinions. The Administrative Agent shall have received the executed legal opinion of Davis Polk and Wardwell LLP, counsel to the Loan Parties, Morris, Nichols, Arsht & Tunnell LLP, Delaware counsel to the Loan Parties, and Foley & Lardner LLP, Wisconsin counsel to the Loan Parties, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(j) Liquidity. The Borrower shall have no less than $40,000,000 of Liquidity as of the Closing Date, after giving effect to the funding of the initial Loans on the Closing Date and to the consummation of the transactions contemplated hereby, including payment in full of the obligations under the Existing Credit Agreement and, subject to clause (c) above, the 2022 Notes.

(k) Closing Date Leverage. The Group Member's (x) Consolidated Total Net Leverage shall not exceed 4.50:1.00 and (y) Consolidated Fixed Charge Coverage Ratio shall not exceed 1.25:1.00, in each case after giving effect to the funding of the initial Loans on the Closing Date and to the consummation of the transactions contemplated hereby, including payment in full of the obligations under the Existing Credit Agreement and, subject to clause (c) above, the 2022 Notes.

(l) Borrowing Notice**.** The Administrative Agent shall have received, in respect of the Term Loans to be made on the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.2.

(m) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(n) No Material Adverse Effect. There shall not have occurred since June 30, 2020, any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(o) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Loan Party, threatened, that, in each case, could reasonably be expected to have a Material Adverse Effect.

For purposes of determining compliance with the conditions specified in this Section 5.2, each Lender that has made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage or Term Percentage, as the case may be, shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender.

5.3 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit, but excluding any Revolving Loan Conversion and any conversion or continuation of Loans pursuant to Section 2.13) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects (or all respects, as applicable) as of such earlier date, subject to the limitations set forth in Section 2.27.

(b) [Reserved].

(c) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 shall be complied with.

(d) Notices of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

(e) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date and the use of proceeds thereof (other than in connection with Limited Condition Acquisitions as set forth in Section 2.27, in which case there shall be (i) no Default or Event of Default as of the LCA Test Date and (ii) no Event of Default under Section 8.1(a) or (f) as of or on the date of such extension of credit or after giving effect to the extensions of credit requested to be made on such date and the use of proceeds thereof).

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder, each Revolving Loan Conversion and each conversion of a Term Loan shall constitute a representation and warranty by the Borrower as of the date of such extension of credit, Revolving Loan Conversion or

conversion of a Term Loan, as applicable, that the conditions contained in this Section 5.3 have been satisfied.

5.4 Post-Closing Conditions Subsequent. The Borrower shall satisfy each of the conditions subsequent to the Closing Date specified in this Section 5.4 to the satisfaction of the Administrative Agent, in each case, by no later than the date specified for such condition below (or such later date as the Administrative Agent shall agree in its sole discretion):

(a) within thirty (30) days after the Closing Date, to the extent not delivered to the Administrative Agent on or prior to the Closing Date, deliver to the Administrative Agent insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guarantee and Collateral Agreement, in form and substance satisfactory to the Administrative Agent;

(b) within ninety (90) days after the Closing Date, deliver to the Administrative Agent Control Agreements with respect to all Deposit Accounts of the Loan Parties, other than Deposit Accounts not required to be subject to a Control Agreement pursuant to the Guarantee and Collateral Agreement; and

(c) the Borrower shall use commercially reasonable efforts to obtain, within thirty (30) days after the Closing Date, a landlord's agreement or bailee letter, as applicable, from the lessor or bailee (x) of the Borrower's chief executive office and (y) any other leased property or any warehouse, processor or converter facility or other location where Collateral with a fair market value in excess of $10,000,000 in the aggregate is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to the Administrative Agent.

SECTION 6
AFFIRMATIVE COVENANTS

Borrower hereby agrees that, at all times prior to the Discharge of Obligations, each of the Loan Parties shall, and, where applicable, shall cause each of its Subsidiaries to:

6.1 Financial Statements. Furnish to the Administrative Agent, for distribution to each Lender:

(a) as soon as available, but in any event within (i) ninety (90) days after the end of each fiscal year of the Borrower or (ii) if the Borrower has been granted an extension by the SEC with respect to any fiscal year of the Borrower permitting the late filing by the Borrower of any annual report on form 10-K (including pursuant to Rule 12b-25), the later of (x) 90 days after the end of such fiscal year of the Borrower and (y) the last day of such extension period, a copy of the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit (other than solely with respect to, or resulting solely from (i) an upcoming maturity date under this Agreement or other Indebtedness permitted pursuant to Section 7.2 occurring within one year from the time such report is delivered or (ii) any potential inability to satisfy any financial maintenance covenant on a future date or in a future period), by either Grant Thornton LLP or independent certified public accountants reasonably acceptable to the Administrative Agent; and

(b) beginning with the first fiscal quarter ending after the Closing Date, as soon as available, but in any event within (i) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower or (ii) if the Borrower has been granted an extension by the SEC with

respect to any fiscal quarter of the Borrower permitting the late filing by the Borrower of any annual report on form 10-Q (including pursuant to Rule 12b-25), the later of (x) 45 days after the end of such fiscal quarter of the Borrower and (y) the last day of such extension period, the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal quarter and the related unaudited consolidated statements of income and of cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects.

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein, and in the case of quarterly financials, except for the absence of footnotes and subject to year-end adjustments) consistently throughout the periods reflected therein and with prior periods.

Additionally, information required to be delivered pursuant to this Section 6.1 and Section 6.2(e) (to the extent any such information is included in Forms 10-K or 10-Q or otherwise filed with the SEC) may be delivered electronically and, shall be deemed to have been delivered on the date (i) on which Borrower posts such information, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 10.2; (ii) when such information is posted electronically on the Borrower's behalf on an internet or intranet website to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any; or (iii) on which Borrower files such Form 10-K, Form 10-Q or other report, as applicable, with the SEC and such documents are publicly available on the SEC's EDGAR filing system or any successor thereto, if any; provided that, in the case of clauses (i) and (ii), (A) the Borrower shall deliver copies of such documents to the Administrative Agent upon its request to the Borrower to deliver such copies until written request to cease delivering paper copies is given by the Administrative Agent and (B) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above., and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents,

6.2 Certificates; Reports; Other Information. Furnish to the Administrative Agent, for distribution to each Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance with any applicable financial covenant set forth in this Agreement referred to therein as of the last day of the fiscal quarter or fiscal year of the Borrower, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of any Loan Party, and (z) solely with respect to the delivery of financial statements pursuant to Section 6.1(a), unless requested to be delivered more frequently (but not more frequently than quarterly) a list of any registered Intellectual Property issued to, applied for or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Effective Date);

(c) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of each fiscal

quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections (collectively, the "***Projections***"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect (it being understood that Projections are not to be viewed as fact and that actual results may differ by a material amount);

(d) promptly, and in any event within five (5) Business Days after receipt thereof by any Group Member, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation by such agency regarding financial or other operational results of any Group Member (other than routine comment letters from the staff of the SEC relating to the Borrower's filings with the SEC);

(e) within five (5) days after the same are sent, copies of each annual report, proxy or financial statement or other material report that any Group Member sends to the holders of any class of its Indebtedness or public equity securities and, within five (5) days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which any Group Member may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) upon request by the Administrative Agent, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law (including any Healthcare Laws) that, in each case, could reasonably be expected to have a Material Adverse Effect;

(g) promptly upon receipt by any Group Member obtaining knowledge of the following, written notice thereof prepared in reasonable detail that any Group Member has become subject to any federal, state, local governmental or civil or criminal investigations or audits involving or related to its compliance with Healthcare Laws (including, without limitation, an inquiry or investigation of any Person having "ownership, financial or control interest" (as that phrase is defined in 42 C.F.R. §420.201 et seq.) in any in any Group Member (other than routine audits in the ordinary course of business that are not the result of any actual or alleged violations of Healthcare Laws) that could reasonably be expected to be material to the Group Members, taken as a whole;

(h) concurrently with the delivery of the financial statements referred to in Section 6.1(a), updated certificates evidencing insurance coverage required to be maintained pursuant to Section 6.6, together with any supplemental reports with respect thereto which the Administrative Agent may reasonably request; and

(i) promptly, such additional financial and other information as the Administrative Agent or any Lender (through the Administrative Agent) may from time to time reasonably request.

6.3 [Reserved].

6.4 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group

Member or where the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against the Collateral, except for Liens permitted pursuant to Section 7.3.

6.5 Maintenance of Existence; Compliance. (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clauses (i) (other than with respect to any Loan Party) or (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law (including any Healthcare Laws) except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Plan; (4) not become a party to any Multiemployer Plan; and (5) ensure that all liabilities under each Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto.

6.6 Maintenance of Property; Insurance. (a) Keep all tangible property useful and necessary in its business in good working order and condition, ordinary wear and tear and casualty loss excepted, and (b) maintain with what, to the knowledge of a Responsible Officer of the Borrower, are financially sound and reputable insurance companies insurance on all its material property in at least such amounts and against at least such risks as are usually insured against in the same general geographic area by companies of a similar size that are engaged in the same or a similar business.

6.7 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) on five (5) Business Days' notice (proved that no notice shall be required if an Event of Default has occurred and is continuing) permit representatives and independent contractors of the Administrative Agent (who may be accompanied by any Lender) to visit and inspect any of its properties (subject to the terms of the applicable lease) and examine and make abstracts from any of its books and records at any reasonable time during normal business hours and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants; provided that the Administrative Agent shall give any Group Member an opportunity for its representatives to participate in any discussions with its accountants; provided further that that (i) Borrower's responsibility to pay the expenses of such inspections shall not exceed once per year at each property, unless an Event of Default has occurred and is continuing and (ii) nothing in this Section 6.7 shall require any Group Member to take any action that would violate a confidentiality agreement (to the extent not created in contemplation of such Group Member's obligations hereunder), waive any attorney-client or similar privilege or disclose trade secrets.

6.8 Notices. Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting any Group Member (i) in which the amount involved is $10,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member that, if adversely determined, could reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(d) (i) promptly after the Borrower has knowledge or becomes aware of the occurrence of any of the following events affecting the Borrower or any ERISA Affiliate (but in no event more than ten (10) Business Days after such event (or such longer period as the Administrative Agent may agree)), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any ERISA Affiliate with respect to such event, but only to the extent that such event would reasonably be expected to result in any material liability to the Borrower or any of its ERISA Affiliates: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Plan that is subject to Title IV of ERISA or Section 412 of the Code;

(ii) promptly after the giving, sending or filing thereof, or the receipt thereof, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Pension Plan, (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event, and (3) copies of such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request;

(e) [reserved];

(f) any material change in accounting policies or financial reporting practices by any Loan Party;

(g) at any time Borrower is not a public company or an issuer of securities that are registered with the SEC under Section 12 of the Exchange Act or is required to file reports under Section 15(d) of the Exchange Act, any changes to the beneficial ownership information set forth in that certain Beneficial Ownership Certificate delivered to the Administrative Agent on April 20, 2021 (as such certificate may be amended, modified or supplemented from time to time); the Loan Parties understand and acknowledge that the Secured Parties rely on such true, accurate and up-to-date beneficial ownership information to meet their regulatory obligations to obtain, verify and record information about the beneficial owners of their legal entity customers; and

(h) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

6.9 Environmental Laws.

(a) Except as could not reasonably be expected to result in a Material Adverse Effect, comply in all material respects with, and use commercially reasonable efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Except as could not reasonably be expected to result in a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

6.10 Operating Accounts. Except as otherwise agreed to by the Administrative Agent, within one year of the Closing Date and at all times thereafter until the Discharge of Obligations, maintain all of the Borrower's and its Domestic Subsidiaries' domestic depository accounts, operating accounts, and excess cash and Cash Equivalents with one or more Lenders or their Affiliates; provided that such accounts shall be subject to a first lien priority perfected security interest in favor of the Administrative Agent within ninety (90) days of the Closing Date or such later date as may be agreed to by the Administrative Agent in its sole discretion.

6.11 [Reserved].

6.12 Additional Collateral, Etc.

(a) With respect to any property (to the extent included in the definition of Collateral) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below or (y) any property subject to a Lien expressly permitted by Section 7.3(g)), as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within thirty (30) Business Days or such longer period as the Administrative Agent shall agree in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement (or in the case of a foreign Loan Party, a comparable collateral document that is customary in the applicable foreign jurisdiction) or such other documents as the Administrative Agent reasonably deems necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the reasonable opinion of the Administrative Agent to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement (or any comparable foreign collateral document) or by law or as may be reasonably requested by the Administrative Agent.

(b) With respect to any fee interest in any real property located in the United States having a fair market value (together with improvements thereof) of at least $5,000,000 (or such greater amount as the Administrative Agent may agree in its sole discretion) acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)),

promptly (and in any event within sixty (60) days (or such longer time period as the Administrative Agent may agree in its sole discretion)) after such acquisition, to the extent requested by the Administrative Agent, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with title and extended coverage insurance covering such real property in an amount not in excess of the fair market value as reasonably estimated by the Borrower as well as a current ALTA survey thereof, together with a surveyor's certificate, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than twenty (20) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent (for delivery to each Lender) shall have received the following documents (collectively, the "***Flood Documents***"): (A) a completed standard "life of loan" flood hazard determination form (a "***Flood Determination Form***") and such other documents as any Lender may reasonably request to complete its flood due diligence, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (if applicable) ("***Loan Party Notice***") that flood insurance coverage under the National Flood Insurance Program ("***NFIP***") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of any such Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with all applicable laws and regulations reasonably satisfactory to the Administrative Agent and each Lender (any of the foregoing being "***Evidence of Flood Insurance***"). Notwithstanding anything contained herein to the contrary, no Mortgage will be executed and delivered until each Lender has confirmed to the Administrative Agent that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Commitments, including the provision of any Incremental Facility, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans or Swingline Loans or (iii) the issuance, renewal or extension of Letters of Credit) shall be subject to (and conditioned upon): (A) the prior delivery of all applicable Flood Documents with respect to such Mortgaged Properties as required by the Flood Laws and as otherwise reasonably required by the Lenders and (B) the Administrative Agent having received written confirmation from each Lenders that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements.

(c) With respect to any new direct or indirect Domestic Subsidiary (other than an Excluded Subsidiary) created or acquired (including pursuant to a Permitted Acquisition or other permitted Investment) after the Closing Date by any Loan Party, any new Domestic Subsidiary formed by Division (other than an Excluded Subsidiary), or if a Domestic Subsidiary no longer qualifies as an Excluded Subsidiary (except to the extent compliance with this Section 6.12 is prohibited by existing Contractual Obligations (so long as such prohibition is not incurred in contemplation of such acquisition or the obligations hereunder) or Requirements of Law binding on such Domestic Subsidiary or its properties), promptly (and in any event within thirty (30) days or such longer period as the Administrative Agent shall agree in its sole discretion), (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such Subsidiary that is owned directly by such Loan Party, (ii) deliver to the

Administrative Agent such documents and instruments as may be required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock (if applicable), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; it being agreed that if such Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary.

(d) With respect to any new direct Foreign Subsidiary created or acquired after the Closing Date by any Loan Party (except to the extent compliance with this Section 6.12 is prohibited by existing Contractual Obligations (so long as such prohibition is not incurred in contemplation of such acquisition or the obligations hereunder) or Requirements of Law binding on such Foreign Subsidiary or its properties or the creation of any such perfected security interest would reasonably be expected to result in material adverse tax consequences to the Group Members), (i) promptly (and in any event within thirty (30) days or such longer period as the Administrative Agent shall agree in its sole discretion) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement (or foreign collateral document, as applicable), as the Administrative Agent reasonably deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Foreign Subsidiary that is directly owned by any such Loan Party to the extent that such Capital Stock is not an Excluded Asset, (ii) promptly (and in any event within thirty (30) days or such longer period as the Administrative Agent shall agree in its sole discretion) deliver to the Administrative Agent the certificates representing such Capital Stock (if certificated), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action (including, as applicable, the delivery of any foreign law pledge documents reasonably requested by the Administrative Agent) as may be necessary or, in the reasonable opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, (iii) solely to the extent required to comply with Section 6.13, promptly (and in any event within ninety (90) days or such longer period as the Administrative Agent shall agree in its sole discretion) cause such Subsidiary (A) to become a party to the Guarantee and Collateral Agreement (or in the case of Foreign Subsidiary, a comparable collateral document that is customary in the applicable foreign jurisdiction) and (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement (or foreign collateral document, as applicable), with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent and (iv) promptly (and in any event within ninety (90) days or such longer period as the Administrative Agent shall agree in its sole discretion) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) At the request of the Administrative Agent, each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from the lessor of each leased property or bailee with respect to any warehouse, processor or converter facility or other location where Collateral with a fair market value in excess of $10,000,000 is stored or located or any property representing the Borrower's corporate headquarters, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

(f) Notwithstanding the foregoing, (1) in the case of Foreign Subsidiaries, all guarantees and security shall be subject to any applicable general mandatory statutory limitations, fraudulent preference, equitable subordination, foreign exchange laws or regulations (or analogous restrictions), transfer pricing or "thin capitalization" rules, earnings stripping, exchange control restrictions, applicable maintenance of capital, retention of title claims, employee consultation or approval requirements, corporate benefit, financial assistance, protection of liquidity, and similar laws, rules and regulations and customary guarantee limitation language in the relevant jurisdiction; provided that the relevant Group Member shall use commercially reasonable endeavors to overcome such limitations (including by way of debt pushdown or seeking requisite approvals), and (2) Subsidiaries may be excluded from the guarantee requirements in circumstances where in the case of Foreign Subsidiaries, such requirements would contravene any legal prohibition, could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties or result in a risk of personal or criminal liability on the part of any officer, director, member or manager of such Subsidiary; provided that the relevant Loan Party shall use commercially reasonable endeavors to overcome such limitations. As a result of the limitations in clause (1) above, the Administrative Agent may elect to waive the requirement to cause a Group Member to become a Guarantor hereunder and such Group Member shall not be a Loan Party for any purposes hereof.

6.13 Loan Party EBITDA Coverage. At any time the combined Consolidated EBITDA of the Loan Parties on a stand-alone basis fails to account for more than 50.1% of the Consolidated EBITDA of the Group Members for any twelve (12) consecutive month period ending on the last day of any fiscal quarter of the Borrower, to the extent requested by the Administrative Agent, the Borrower shall within thirty (30) days (ninety (90) days in the case of a Foreign Subsidiary) or such later date as the Administrative Agent may approve in its sole discretion), cause a sufficient number of Subsidiaries which are reasonably acceptable to the Administrative Agent (including for the avoidance of doubt any Foreign Subsidiaries or Immaterial Subsidiaries as may be required to satisfy this Section 6.13) as are not then Guarantors to become Guarantors (and deliver such documents, certificates and opinions as may be required to secure a perfected first priority Lien in favor of the Administrative Agent and as otherwise reasonably requested by the Administrative Agent) so that, when the combined Consolidated EBITDA of the Loan Parties on a stand-alone basis is recalculated to include the Consolidated EBITDA of such new Guarantors, the combined Consolidated EBITDA of the Loan Parties on a stand-alone basis shall account for 50.1% or more of Consolidated EBITDA of the Group Members for such period.

6.14 Use of Proceeds. Use the proceeds of each credit extension only for the purposes specified in Section 4.16.

6.15 Designated Senior Indebtedness. Cause the Loan Documents and all of the Obligations to be deemed "Designated Senior Indebtedness" or a similar concept thereto for purposes of any other Indebtedness for borrowed money of the Loan Parties, to the extent that the agreements governing such other Indebtedness includes such concept.

6.16 Anti-Corruption Laws; Sanctions. Conduct its business in compliance in all material respects with applicable Sanctions, with the FCPA, the UK Bribery Act 2010 and any other applicable anti-

corruption laws, and maintain policies and procedures reasonably designed to promote and achieve compliance by the Borrower, its Subsidiaries, and their respective directors, officers and employees with such laws.

6.17 Further Assurances. Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent's Lien on the Collateral or to effect the purposes of this Agreement.

SECTION 7
NEGATIVE COVENANTS

Borrower hereby agrees that, at all times prior to the Discharge of Obligations, no Loan Party shall, nor shall any Loan Party permit any of its respective Subsidiaries, to, directly or indirectly:

7.1 Financial Condition Covenants.

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as at the last day of any period of four (4) consecutive fiscal quarters of the Group Members, commencing with the fiscal quarter ending September 30, 2021, to be less than 1.25:1.00.

(b) Consolidated Senior Net Leverage Ratio. Permit the Consolidated Senior Net Leverage Ratio as at the last day of any period of four (4) consecutive fiscal quarters of the Group Members set forth below to exceed the ratio set forth below opposite such quarter:

Trailing Four (4) Fiscal Quarters Ending	Consolidated Senior Net Leverage Ratio
September 30, 2021	3.50:1.00
December 31, 2021	3.50:1.00
March 31, 2022	3.00:1.00
June 30, 2022	3.00:1.00
September 30, 2022	3.00:1.00
December 31, 2022	3.00:1.00
March 31, 2023 and each fiscal quarter thereafter	2.50:1.00

7.2 Indebtedness. Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except (and subject to the last sentence of this Section 7.2):

(a) Indebtedness of any Loan Party (i) pursuant to any Loan Document and (ii) under any Cash Management Agreement;

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party; (ii) any Group Member (which is not a Loan Party) owing to any other Group Member (which is not a Loan Party); (iii) any Group Member (which is not a Loan Party) owing to any Loan Party, which constitutes an Investment

permitted by Sections 7.8(f)(iii) and (l); provided, that such Indebtedness from any Group Member (which is not a Loan Party) owing to a Loan Party shall be evidenced by a master promissory note, and such promissory note shall be pledged as Collateral; and (iv) any Loan Party owing to any Group Member (which is not a Loan Party); provided that such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent;

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party; (iii) by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party) or (iv) of any Loan Party of the Indebtedness of any Group Member that is not a Loan Party, so long as the aggregate amount of such Guarantee Obligations is an Investment permitted by Sections 7.8(f)(iii) and (l); provided that, in any case of clauses (i), (ii), (iii) or (iv), the underlying Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any Permitted Refinancing;

(e) Indebtedness (including, without limitation, any Capital Lease Obligations and purchase money financing) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed $7,500,000 at any one time outstanding and any Permitted Refinancing;

(f) Surety Indebtedness and any other Indebtedness in respect of letters of credit, banker's acceptances or similar arrangements, provided that the aggregate amount of any such Indebtedness outstanding at any time shall not exceed $5,000,000;

(g) Indebtedness owed to any Person providing worker's compensation, health, disability or other employee benefits (other than ERISA) pursuant to reimbursement or indemnification obligations to such Person, in each case in the ordinary course of business;

(h) Indebtedness of the Group Members in an aggregate principal amount, for all such Indebtedness taken together, not to exceed $5,000,000 at any one time outstanding;

(i) obligations (contingent or otherwise) of the Borrower or any of its Subsidiaries existing or arising under any Specified Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.13 and not for purposes of speculation;

(j) Indebtedness of a Person (other than the Borrower or a Subsidiary) existing at the time such Person is merged with or into a Borrower or a Subsidiary or becomes a Subsidiary and any Permitted Refinancing, provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness, and (iv) the aggregate principal amount of such Indebtedness shall not exceed $2,500,000 at any time outstanding;

(k) Indebtedness in the form of purchase price adjustments, earn outs, deferred compensation, deferred purchase price, seller notes, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.8; provided that the amount of such obligation shall be deemed part of the cost of such

Investment (the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP or the amount actually paid);

(l) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(m) Indebtedness consisting of the financing of insurance premiums;

(n) Permitted Convertible Indebtedness in an aggregate principal amount not to exceed $110,000,000;

(o) [reserved]; and

(p) to the extent constituting Indebtedness, take-or-pay obligations contained in supply arrangements incurred in the ordinary course of business;

provided that notwithstanding anything to the contrary contained herein, at no time shall the funded Indebtedness for borrowed money of the Loan Parties exceed $232,000,000.

7.3 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, workman's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and social security or similar legislation;

(d) pledges or deposits to secure the performance of bids, tenders, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(e) covenants, conditions, easements, rights-of-way, restrictions, encroachments, protrusions, building codes and other similar encumbrances that, in the aggregate, do not in any case materially detract from the value of the Collateral subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f) and any modifications, replacements, renewals, restructurings, refinancings or extensions thereof; provided that (i) no such Lien is spread to cover any additional property after the Closing Date other than after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.2(d) and proceeds and products thereof, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(d);

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the acquisition, improvement, repair, lease or construction of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with, or within ninety (90) days after, the acquisition, improvement, repair, lease or construction of such fixed or capital assets, (ii) such Liens do not at any time encumber any property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits; provided that, individual financings permitted hereunder of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender, and (iii) the amount of Indebtedness secured thereby is not increased unless such increased Indebtedness is permitted hereunder;

(h) Liens created pursuant to the Security Documents;

(i) (x) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease, sublease, license or sublicense entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed and customary rights attendant thereto, (y) leases, licenses, subleases and sublicenses of real property granted to others in the ordinary course of business and (z) non-exclusive licenses or sublicenses of Intellectual Property in the ordinary course of business;

(j) attachments, appeal bonds, judgments and other similar Liens that do not constitute an Event of Default under Section 8.1(h) of this Agreement;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depositary institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection or otherwise as occurring as a matter of law;

(l) (i) cash deposits and liens on cash and Cash Equivalents pledged to secure Indebtedness permitted under Section 7.2(f), (ii) Liens securing reimbursement obligations with respect to letters of credit permitted by Section 7.2(f) that encumber documents and other property relating to such letters of credit, and (iii) Liens securing Obligations under any Specified Swap Agreements permitted by Section 7.2(i);

(m) Liens on property of a Person existing at the time such Person is acquired by, merged into or consolidated with a Group Member or becomes a Subsidiary of a Group Member or acquired by a Group Member and Lies on property existing at the time such property is acquired by a Group Member; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person or property being acquired (and any proceeds, products and accessions thereof and any after-acquired property), and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(n) the replacement, extension or renewal of any Lien permitted by clause (m) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(o) Liens on insurance proceeds in favor of insurance companies granted solely to secure financed insurance premiums;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods;

(q) Liens on any earnest money deposits consisting of earnest money deposits required in connection with a Permitted Acquisition in connection with an acquisition of property not otherwise prohibited hereunder;

(r) other Liens securing obligations in an outstanding amount not to exceed $5,000,000 at any time; and

(s) Liens (i) arising from operating leases with respect to assets not owned by any Group Member and the precautionary UCC filings in respect thereof and (ii) on equipment or other materials which are not owned by any Group Member and located on the premises of any Group Member (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with customary practices of the Group Members and the precautionary UCC filings in respect thereof.

7.4 Fundamental Changes. Consummate any merger, consolidation or amalgamation, division of or by a limited company, or an allocation of assets to a series of a limited liability company (or the unwinding of such division or allocation) or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Group Member that is not a Loan Party may be merged, amalgamated or consolidated with or into (A) any Loan Party (provided that a Loan Party shall be the continuing or surviving Person, or the continuing or surviving Person shall become a Loan Party substantially contemporaneous with such merger, amalgamation or consolidation) or (B) any Group Member that is not a Loan Party, and (ii) any Loan Party may be merged, amalgamated or consolidated with or into with any other Loan Party (provided that if such merger, amalgamation or consolidation involves the Borrower, the Borrower shall be the continuing or surviving Person);

(b) (i) any Group Member that is not a Loan Party may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Group Member or (B) pursuant to a Disposition permitted by Section 7.5 and (ii) any Loan Party (other than the Borrower) may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Loan Party or (B) pursuant to a Disposition permitted by Section 7.5;

(c) any Investment expressly permitted by Section 7.8 may be structured as a merger, consolidation or amalgamation; and

(d) any Subsidiary that is a limited liability company may consummate a Division as the Dividing Person if, immediately upon the consummation of the Division, the assets of the applicable Dividing Person are held by one or more Loan Parties.

7.5 Disposition of Property. Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of obsolete, worn out or surplus property in the ordinary course of business;

(b) Dispositions of Inventory in the ordinary course of business;

(c) Dispositions permitted by Sections 7.4(b)(i)(A) and (b)(ii)(A);

(d) the sale or issuance of the Capital Stock of any Subsidiary of the Borrower (i) to the Borrower or any other Loan Party, or (ii) by a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party or (iii) in connection with any transaction that does not result in a Change of Control;

(e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) the non-exclusive licensing or sublicensing of patents, trademarks, copyrights, and other Intellectual Property rights in the ordinary course of business;

(g) the Disposition of property (i) from any Loan Party to any other Loan Party, and (ii) from any Group Member (which is not a Loan Party) to any other Group Member; provided that in each case in which there is a Lien over the relevant property in favor of the Administrative Agent in advance of the Disposition, an equivalent Lien will be granted to the Administrative Agent by the Group Member which acquires the property;

(h) Dispositions of property subject to a Casualty Event;

(i) leases or subleases of real property;

(j) the sale, transfer, disposition or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise, settlement or collection thereof;

(k) any abandonment, lapse, cancellation, non-renewal, disposition or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines in good faith (i) is not material to Group Members' business and (ii) the cost of maintaining such Intellectual Property would outweigh the benefit to Group Members of so maintaining it;

(l) Restricted Payments permitted by Section 7.6, Investments permitted by Section 7.8 and Liens permitted by Section 7.3;

(m) Dispositions of other property having a fair market value not to exceed $10,000,000 in the aggregate for any fiscal year of the Group Members so long as such Disposition is made for fair market value, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition; and provided further that the Net Cash Proceeds thereof are used to prepay the Term Loans or the Revolving Loans, as applicable, in accordance with Section 2.12(e);

(n) Dispositions of assets in the ordinary course of business that the applicable Group Member determines in good faith is no longer used or useful in the business of such Group Member;

(o) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between any joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(p) (i) voluntary cancellations, terminations or surrender by any Group Member of any immaterial lease or license, (ii) the expiration of any option agreement in respect of real or personal property

and (iii) the settlement of any litigation claims (to the extent such claims constitutes an asset), in each case, in the ordinary course of business; and

(q) Dispositions approved by the Administrative Agent.

7.6 Restricted Payments. Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, pay any earn-out payment, seller debt or deferred purchase price payments, declare or pay any dividend (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "***Restricted Payments***"), except that:

(a) any Group Member may make Restricted Payments to any Loan Party, and any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;

(b) so long as no Event of Default shall have occurred and be continuing at the time of such purchase or would arise after giving effect thereto, without duplication of any Restricted Payment described in clause (k) below, each Group Member may purchase common stock or common stock options from present or former officers, directors, employees or consultants of any Group Member upon the death, disability or termination of employment of such person or otherwise in accordance with any stock option or stock appreciation rights plan or any stock ownership or subscription plan or equity incentive or other similar plan or termination agreement; provided that the aggregate amount of payments made under this clause shall not exceed $2,000,000 during any fiscal year of the Group Members (or such greater amount as the Administrative Agent may agree in its sole discretion);

(c) [reserved];

(d) the Group Members may make Restricted Payments so long as immediately after giving effect to such payment Liquidity shall equal or exceed $20,000,000, and immediately after giving effect to such Restricted Payment, (i) the Group Members shall be in compliance with each of the covenants set forth in Section 7.1, (ii) the Consolidated Senior Net Leverage Ratio shall not exceed the ratio that is 0.25x less than the applicable covenant level, in each case, based upon financial statements delivered to the Administrative Agent which give pro forma effect to the making of such payment as of the last day of the most recently ended fiscal quarter for which financial statements have been delivered hereunder, and (iii) no Default or Event of Default has occurred and is continuing prior to making such Restricted Payment or would arise after giving effect thereto; provided that, the aggregate amount of payments made under this clause (d) shall not exceed $2,500,000 during any fiscal year of the Group Members;

(e) any Group Member may make payments in respect of Subordinated Indebtedness to the extent expressly permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders;

(f) so long as no Event of Default shall have occurred and be continuing at the time of such purchase or would arise after giving effect thereto, (i) the Borrower may make repurchases of Capital Stock deemed to occur upon exercise of stock options or warrants if such repurchased Capital Stock represents a portion of the exercise price of such options or warrants, and (ii) the Borrower may make

repurchases of Capital Stock deemed to occur upon the withholding of a portion of the Capital Stock granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting thereof);

(g) the Borrower may deliver its common Capital Stock (other than Disqualified Stock) upon conversion of any convertible Indebtedness having been issued by the Borrower;

(h) each Group Member may purchase, redeem or otherwise acquire Capital Stock issued by it with the proceeds received from the substantially concurrent issue of new shares of its Capital Stock (other than Disqualified Stock); provided that any such issuance is otherwise permitted hereunder;

(i) so long as no Event of Default shall have occurred and be continuing at the time of any such Restricted Payment or would result therefrom, Restricted Payments not to exceed $5,000,000 during any fiscal year of the Borrower;

(j) dividends payable solely in Capital Stock (other than Disqualified Stock) (including stock splits);

(k) so long as no Event of Default has occurred and is continuing prior to making such Restricted Payment or would arise after giving effect thereto, Restricted Payment by the Borrower in accordance with stock option plans or other benefit plans for management or employees of the Borrower or its Subsidiaries in an aggregate amount not to exceed $2,000,000 in the aggregate per fiscal year;

(l) the cashless repurchase of equity interests deemed to occur upon the exercise of any option or warrant of the Borrower;

(m) so long as no Event of Default has occurred and is continuing prior to making such Restricted Payment or would arise after giving effect thereto, cash payments in lieu of issuing fractional or "odd lot" equity interests in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for equity interests in the Borrower (including any Permitted Convertible Indebtedness) in an aggregate amount not to exceed $2,000,000 during the term of this Agreement;

(n) to the extent constituting Restricted Payments, (i) any refinancing of the 2022 Notes or 2026 Notes that constitutes Permitted Convertible Indebtedness and (ii) pay, when due, interest, fees and reimbursable indemnities and expenses payable in respect of any Permitted Convertible Indebtedness; and

(o) so long as (i) no Event of Default has occurred and is continuing and (ii) the Borrower shall have no less than $40,000,000 of Liquidity, in each case prior to making such Restricted Payment or would arise after giving effect thereto, Restricted Payments in the form of common stock buybacks by the Borrower made contemporaneously with, or on or prior to the Closing Date; provided that the aggregate amount of all such Restricted Payments in reliance on this clause (o) does not exceed $15,000,000 during the term of this Agreement.

7.7 [Reserved].

7.8 Investments. Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt

securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "***Investments***"), except:

(a) extensions of trade credit and advances made in connection with purchases of goods or services, in each case, in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) (i) loans and advances to employees of any Group Member in the ordinary course of business (including for travel, entertainment and relocation expenses) and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Group Members pursuant to employee stock purchase plans or agreements approved by the applicable Group Member's board of directors (or other governing body) in an aggregate amount for all Group Members under this clause (d) not to exceed $2,500,000 at any one time outstanding;

(e) [reserved];

(f) intercompany Investments by (i) any Loan Party in any other Loan Party, (ii) any Group Member that is not a Loan Party in any other Group Member, or (iii) any Loan Party in any Group Member that is not a Loan Party to the extent that (A) no Default or Event of Defaults exists or would result therefrom, and (B) such Investments do not exceed (1) $7,500,000 in any fiscal year of the Group Members and (2) $15,000,000 in the aggregate during the term of this Agreement;

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit or similar transactions;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

(i) Investments held by any Person as of the date such Person becomes a Subsidiary of the Borrower, including in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Person becoming a Subsidiary, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition, such Subsidiary remains the only holder of such Investment;

(j) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(k) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units

of, any Person (each, a "***Permitted Acquisition***"); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with such asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrower on the date hereof, or (y) in a business that is permitted by Section 7.17;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) [reserved];

(iv) the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days (or such longer period as approved by the Administrative Agent in its sole discretion) after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(v) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with any applicable requirements of Section 6.12 and 6.13,

(vi) Liquidity shall equal or exceed $20,000,000 as of the date the definitive agreements relating to any such acquisition or other purchase are executed (after giving effect, on a Pro Forma Basis, to the consummation of such acquisition or other purchase);

(vii) (A) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing (other than in connection with a Limited Condition Acquisition, in which case there shall be (x) no Default or Event of Default as of the LCA Test Date and (y) no Event of Default under Section 8.1(a) or (f) immediately before and immediately giving effect to such purchase, investment or other acquisition), (B) immediately after giving effect to such purchase, investment or other acquisition, the Group Members shall be in pro forma compliance with each of the covenants set forth in Section 7.1 and (C) the Consolidated Senior Net Leverage Ratio shall not exceed the ratio that is 0.25x less than the applicable covenant level, in each case, as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder (which shall be calculated in accordance with Section 1.4 in the case of a Limited Condition Acquisition);

(viii) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2;

(ix) such purchase or acquisition shall not constitute an Unfriendly Acquisition;

(x) [reserved]; and

(xi) if the consideration to be paid (or payable) in connection with such purchase, investment or acquisition is greater than $10,000,0000, the Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), (A) a copy of all applicable business and financial due diligence information reasonably available to the Borrower, and (B) a certificate of a Responsible Officer, certifying that that such purchase,

investment or acquisition constitutes a Permitted Acquisition and demonstrating compliance with clause (vii) above;

(l) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does not exceed $5,000,000 during any fiscal year of the Group Members;

(m) to the extent constituting Investments, advances in respect of transfer pricing and cost-sharing arrangements (i.e. "cost-plus" arrangements) that are on arm's length terms and in the ordinary course of business;

(n) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions;

(o) Investments (i) in existence on the date hereof listed on Schedule 7.8(o), (ii) consisting of capital contributions made to Subsidiaries prior to the Effective Date and (iii) any modification, replacement, renewal or extension of any Investments made by a Borrower in an Excluded Subsidiary so long as any such modification, replacement, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 7.8;

(p) Investments constituting installment sales of equipment in the ordinary course of business;

(q) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided, however, that this clause (q) shall not apply to Investments of the Borrower in any Subsidiary;

(r) Investments for which the entire consideration is in the form of Capital Stock (other than Disqualified Stock) of the Borrower; and

(s) Capital Expenditures.

7.9 ERISA. Except as would not, individually or in the aggregate, result in a Material Adverse Effect, Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any liability to the Borrower or any ERISA Affiliate, (b) permit to exist any ERISA Event which presents the risk of a liability to the Borrower or any ERISA Affiliate, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to the Borrower or any ERISA Affiliate, (d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could be reasonably likely to result in any material liability to the Borrower or any ERISA Affiliate, (e) permit the present value of all nonforfeitable accrued benefits under any Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) materially to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

7.10 Payments and Modifications of Certain Preferred Stock and Debt Instruments. (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock (i) that would move to an earlier date the scheduled redemption date (but only to the extent that moving any such scheduled redemption date would result in the redemption to be prior to ninety-one (91) days after the Revolving Termination Date) or increase the amount of any scheduled redemption payment or increase the rate or move to an earlier date any date for payment of dividends thereon or (ii) that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party; (b) other than pursuant to any refinancing or replacement of Indebtedness permitted by Section 7.2, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Indebtedness permitted by Section 7.2 (other than Indebtedness pursuant to any Loan Document and Subordinated Indebtedness which is addressed in Section 7.22) that would shorten the maturity (but only to the extent such shortening, would result in the maturity of such Indebtedness to be prior to 91 days after the Revolving Termination Date) or increase the amount of any payment of principal thereof or the rate of interest thereon or shorten any date for payment of interest thereon or that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party; or (c) make any payment or prepayment of principal of, premium, if any, or redemption, purchase, retirement, defeasance, sinking fund, settlement, conversion or similar payment with respect any Permitted Convertible Indebtedness unless made exclusively with common stock of the Borrower and cash in lieu of a fractional share due upon conversion thereof or in connection with a refinancing of existing Permitted Convertible Indebtedness with new Permitted Convertible Indebtedness to the extent permitted hereunder; provided that the Borrower may (x) make any payments in respect of the 2022 Notes that were not repaid or redeemed on or prior to the Closing Date so long as the Payment Conditions are satisfied and (y) pay, when due, interest, fees and reimbursable indemnities and expenses payable in respect of any Permitted Convertible Indebtedness.

7.11 Transactions with Affiliates. Except as otherwise disclosed on Schedule 7.11, enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (a) (i) otherwise permitted under this Agreement, (ii) in the ordinary course of business of the relevant Group Member, and (iii) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, (b) a Restricted Payment permitted by Section 7.6, (c) reasonable and customary indemnification arrangements, employee benefits, compensation arrangements (including equity-based compensation and bonuses), and reimbursement of expenses of employees, consultants, officers, and directors, in each case, approved by the board of directors or management of the Borrower or its Subsidiaries, (d) for sales of equity interests in the Borrower to Affiliates of the Borrower not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith.

7.12 Sale Leaseback Transactions. Enter into any Sale Leaseback Transaction, except in connection with transactions that would be permitted under this Section 7.

7.13 Swap Agreements. Enter into any Swap Agreement, except Specified Swap Agreements which are entered into by a Group Member to (a) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (b) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member.

7.14 Accounting Changes. Make any change in its (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.15 Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other similar agreements and (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein, (e) any restriction pursuant to any document, agreement or instrument governing or relating to any Lien permitted under Sections 7.3(c), (d), (f), (g), (l), (m), (n), and (q) (provided that any such restriction relates only to the assets or property subject to such Lien), (f) customary provisions in joint venture agreement and other similar agreements that restrict the transfer of ownership interests in such joint ventures or provisions limiting the disposition or distribution of assets or property (other than dividends on a pro rata basis based on ownership percentage) of the applicable joint venture, which limitation is applicable only to the assets that are the subject of such agreements; provided that such agreement was not entered into in contravention of the terms of the Loan Documents, (f) limitations set forth in Subordinated Indebtedness and (g) limitations set forth in any Permitted Convertible Indebtedness and the Existing Credit Facilities.

7.16 Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby, (v) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or, in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement is not as a whole materially less favorable to such Subsidiary, (vi) restrictions under any Subordinated Debt Documents, (vii) restrictions on the transfer of any asset pending the close of the sale of such asset and customary restrictions contained in purchase agreements and acquisition agreements (including by way of merger, acquisition or consolidation), to the extent in effect pending the consummation of such transaction, (viii) customary net worth provisions or similar financial maintenance provisions contained in real property leases entered into by a Foreign Subsidiary, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations under the Loan Documents, (ix) applicable law, (x) restrictions on cash or other deposits or net worth imposed under agreements entered into in the ordinary course of business, (xi) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business, (xii) any restriction pursuant to any document, agreement

or instrument governing or relating to any Lien permitted under Sections 7.3(c), (d), (f), (g), (l), (m), (n), and (q) (provided that any such restriction relates only to the assets or property subject to such Lien) or (xiii) restrictions set forth in any Permitted Convertible Indebtedness and the Existing Credit Facilities.

7.17 Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Group Members are engaged on the date of this Agreement or that are reasonably related, ancillary or incidental thereto.

7.18 [Reserved].

7.19 [Reserved].

7.20 Amendments to Organizational Agreements. Amend or permit any amendments to any Loan Party's organizational documents if such amendment could reasonably be expected to be materially adverse to the Administrative or the Lenders.

7.21 Use of Proceeds. Use the proceeds of any Loan or extension of credit hereunder, whether directly or indirectly, (a) to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board; (b) to finance an Unfriendly Acquisition; or (c) to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Lead Arranger, Administrative Agent, Issuing Lender, Swingline Lender, or otherwise) of Sanctions (or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity in violation of the foregoing); or (c) for any purpose which would breach the Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar legislation in other jurisdictions.

7.22 Subordinated Indebtedness.

Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Group Members' ability to pay and perform each of their Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders in any material respect, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

7.23 Anti-Terrorism Laws. Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (a "***Blocked Person***"), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading

or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act.

7.24 Limitations on Morphormics, Inc. The Borrower shall not permit Morphormics, Inc. to, directly or indirectly, (a) enter into or permit to exist any transaction or agreement (including any agreement for the incurrence or assumption of Indebtedness), between itself and any other Person, (b) engage in any business or conduct any activity (including the making of any Investment or payment) or transfer any of its assets and the performance of ministerial or administrative activities and payment of taxes and administrative fees necessary for the maintenance of its existence, (c) consolidate or merge with or into any other Person, or (d) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired.

SECTION 8
EVENTS OF DEFAULT

8.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay any amount of principal of any Loan when due in accordance with the terms hereof; or the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other written statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in (A) Section 5.4, Section 6.1, or Section 6.2 (and in each case of this sub-clause (A) such default shall continue unremedied for a period of five (5) Business Days), or (B) clause (i) or (ii) of Section 6.5(a), Section 6.6(b), Section 6.8(a), Section 6.16 or Section 7 of this Agreement or (ii) an "Event of Default" under and as defined in any Security Document shall have occurred and be continuing beyond any applicable notice or cure period therein; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document applicable to it (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied for a period of thirty (30) days thereafter; or

(e) (i) any Group Member shall (A) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto, or within the applicable notice or cure period with respect to such due date; (B) default in making any payment of any interest, fees, costs or expenses on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (C) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (D) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any

other event shall occur or condition exist, the effect of which default or other event or condition is to (1) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (2) to cause, with the giving of notice if required, any Group Member to purchase, redeem, mandatorily prepay or make an offer to purchase, redeem or mandatorily prepay such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in any of clauses (i)(A), (B), (C), or (D) of this Section 8.1(e) shall have occurred with respect to Indebtedness, the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value that is or would be owed by a Group Member (other than in the form of Capital Stock of the Borrower that is not Disqualified Stock) of which exceeds $5,000,000; provided, further, that this clause (e)(i) shall not apply to any event that permits or causes repurchase, payment, prepayment, redemption, conversion, settlement or exchange of Permitted Convertible Indebtedness that is not the result of a breach or default by a Group Member of the terms of an agreement governing such Permitted Convertible Indebtedness or an event or condition that constitutes an Event of Default hereunder; or (ii) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member (after any applicable grace period (but excluding any standstill or similar period) and to the extent not waived); or

(f) (i) any Group Member (other than any Immaterial Subsidiary) shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Group Member (other than any Immaterial Subsidiary) shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member (other than any Immaterial Subsidiary) any case, proceeding or other action of a nature referred to in clause (i) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed, undischarged or unbonded for a period of 60 days (provided that, during such 60 day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member (other than any Immaterial Subsidiary) any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof (provided that, during such 60 day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member (other than any Immaterial Subsidiary) shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member (other than any Immaterial Subsidiary) shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of $5,000,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds $5,000,000; or

(h) there is entered against any Group Member (i) one or more final judgments or orders for the payment of money involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of $5,000,000 or more, or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within forty-five (45) days from the entry thereof; or

(i) (i) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than pursuant to the terms thereof or hereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(ii) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business; or

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(k) a Change of Control shall occur; or

(l) any Loan Document (including the subordination provisions of any subordination agreement or intercreditor agreement governing Subordinated Indebtedness) not otherwise referenced in Section 8.1(i) or (j), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document.

8.2 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to the Borrower, the Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Term Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Term Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Cash Management Bank may terminate any Cash Management Agreement then outstanding and declare all Obligations then owing by the Group Members under any such Cash Management Agreements then outstanding to be due and payable

forthwith, whereupon the same shall immediately become due and payable; and (iv) the Administrative Agent may exercise on behalf of itself, any Cash Management Bank, the Lenders and the Issuing Lender all rights and remedies available to it, any such Cash Management Bank, the Lenders and the Issuing Lender under the Loan Documents.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 103% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3.

In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by any applicable Cash Management Bank, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Cash Management Services then outstanding, which Cash Collateralized amounts shall be applied by the Administrative Agent to the payment of all such outstanding Cash Management Services, and any unused portion thereof remaining after all such Cash Management Services shall have been fully paid and satisfied in full shall be applied by the Administrative Agent to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents in accordance with the terms of Section 8.3.

(c) After all such Letters of Credit and Cash Management Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Cash Management Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.3 Application of Funds. After the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21 (including interest thereon)) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and Letter of Credit Fees) payable to the Lenders, the Issuing Lender ((including any Letter of Credit Fronting Fees and Issuing Lender Fees), and any Qualified Counterparty and any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and the reasonable, documented out-of-pocket fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender, and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to the extent that the Swingline Lender has advanced any Swingline Loans that have not been refunded by each Lender's Swingline Participation Amount, payment to the Swingline Lender of that portion of the Obligations constituting the unpaid principal of and interest upon the Swingline Loans advanced by the Swingline Lender;

Fourth, to the payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest in respect of any Cash Management Services and on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, and to payment of premiums and other fees (including any interest thereon) under any Specified Swap Agreements and any Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Disbursements which have not yet been converted into Revolving Loans, and settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any applicable Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fifth and payable to them;

Sixth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 3.10;

Seventh, for the account of any applicable Qualified Counterparty and any applicable Cash Management Bank, to any settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements not paid pursuant to clause Fifth and to cash collateralize Obligations arising under any then outstanding Specified Swap Agreements and Cash Management Services, in each case, ratably among them in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations described in this clause Eighth and payable to them; and

Last, the balance, if any, after the Discharge of Obligations, to the Borrower or as otherwise required by applicable Requirements of Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral for Letters of Credit after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, no Excluded Swap Obligation of any Guarantor shall be paid with amounts received from such Guarantor or from any Collateral in which such Guarantor has granted to the Administrative Agent a Lien (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement or any other applicable Security Document; provided, however, that each party to this

Agreement hereby acknowledges and agrees that appropriate adjustments shall be made by the Administrative Agent (which adjustments shall be controlling in the absence of manifest error) with respect to payments received from other Loan Parties to preserve the allocation of such payments to the satisfaction of the Obligations in the order otherwise contemplated in this Section 8.3.

SECTION 9
THE ADMINISTRATIVE AGENT

9.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders, the Issuing Lender, and the Swingline Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or obligations, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each of the Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty and provider of Cash Management Services) hereby irrevocably (i) authorizes the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement and any intercreditor or subordination agreements, and (ii) appoints and authorizes the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.2 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

9.3 Exculpatory Provisions. The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2, Section 5.3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

9.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "***notice of default***." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6 Non-Reliance on Administrative Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any Affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall from time to time deem

appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

9.7 Indemnification. Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Loan Parties to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Loan Parties; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8 Agent in Its Individual Capacity. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Group Members or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.9 Successor Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right (so long as no Event of Default has occurred and is continuing, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed) to appoint a successor. If no such successor shall

have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "***Resignation Effective Date***"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and appoint a successor (so long as no Event of Default has occurred and is continuing, in consultation with the Borrower). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "***Removal Effective Date***"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

9.10 Collateral and Guaranty Matters.

(a) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (A) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any

other Loan Document, or (C) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.3(g) and (i); and

(iii) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the guaranty pursuant to this Section 9.10.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Notwithstanding anything contained in any Loan Document, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guaranty of the Obligations (including any such guaranty provided by the Guarantors pursuant to the Guarantee and Collateral Agreement), it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof; provided that, for the avoidance of doubt, in no event shall a Secured Party be restricted hereunder from filing a proof of claim on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law or any other judicial proceeding. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of such Secured Party (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, to have agreed to the foregoing provisions. In furtherance of the foregoing, and not in limitation thereof, no Specified Swap Agreement and no Cash Management Agreement, the Obligations under which constitute Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the Obligations of any Loan Party under any Loan Document except as expressly provided herein or in the Guarantee and Collateral Agreement. By accepting the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, any Secured Party that is a Cash Management Bank or a Qualified Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and to have agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

9.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

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

9.12 No Other Duties, etc. Anything herein to the contrary notwithstanding, the Lead Arranger listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

9.13 Cash Management Bank and Qualified Counterparty Reports. Each Cash Management Bank and each Qualified Counterparty agrees to furnish to the Administrative Agent, as frequently as the Administrative Agent may reasonably request, with a summary of all Obligations in respect of Cash Management Services and/or Specified Swap Agreements, as applicable, due or to become due to such Cash Management Bank or Qualified Counterparty, as applicable. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Cash Management Bank or Qualified Counterparty (in its capacity as a Cash Management Bank or Qualified Counterparty and not in its capacity as a Lender) unless the Administrative Agent has received written notice thereof from such Cash Management Bank or Qualified Counterparty and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Cash Management Bank or Qualified Counterparty on account of Cash Management Services or Specified Swap Agreements are set forth in such notice.

9.14 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, Issuing Lender, Swingline Lender, or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender, or Secured Party (any such Lender, Issuing Lender, Swingline Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Lender, Swingline Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Lender, Swingline Lender, or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Lender, Swingline Lender, or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Lender, Swingline Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.14(b).

(c) Each Lender, Issuing Lender, Swingline Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such

Lender, Issuing Lender, Swingline Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Lender, Swingline Lender or Secured Party from any source, against any amount due to the Administrative Agent under clause (a) hereof or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with clause (a) hereof, from any Lender, Issuing Lender or Swingline Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender, Issuing Lender or Swingline Lender at any time, (i) such Lender, Issuing Lender or Swingline Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments), the "**Erroneous Payment Deficiency Assignment**") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender, Issuing Lender or Swingline Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender, assigning Issuing Lender or assigning Swingline Lender shall cease to be a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, assigning Issuing Lender or assigning Swingline Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender, Issuing Lender or Swingline Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender, Issuing Lender or Swingline Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender, Issuing Lender or Swingline Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Lender, Swingline Lender or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "**Erroneous Payment Subrogation Rights**").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine

Each party's obligations, agreements and waivers under this Section 9.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, a Swingline Lender or Issuing Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

9.15 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for

the benefit of, the Administrative Agent, and the Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or the Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(b) The Administrative Agent and the Lead Arranger hereby inform the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.16 Survival. This Section 9 shall survive the Discharge of Obligations.

SECTION 10
MISCELLANEOUS

10.1 Amendments and Waivers.

(a) Neither this Agreement, any other Loan Document (other than any L/C Related Document), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1, Section 2.17 or Section 2.27. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee or other amount payable hereunder (except that no amendment or modification of defined terms used in the financial covenants in this Agreement or waiver of any Default or Event of Default or the right to receive interest at the Default Rate) shall constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment or Term Commitment (including for the avoidance of doubt, the date set forth in Section 5.2), in each case, without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any

Loan Document, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the value of the guarantees (taken as a whole) of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend, modify or waive the *pro rata* requirements of Section 2.18, Section 10.7(a), or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders without the written consent of each Lender; (E) contractually subordinate the Obligations (including any guarantee thereof), or the Liens on all or substantially all of the Collateral granted under the Loan Documents, to any other Indebtedness or Lien (including, without limitation, any other Indebtedness or Lien issued under the Credit Agreement or any other agreement), in each case without the written consent of all Lenders; (F) amend, modify or waive any of the requirements in Section 5.2 without the written consent of all Lenders; (G) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (H) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (I) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (J) amend or modify the application of prepayments set forth in Section 2.12(e) or the application of payments set forth in Section 8.3 without the written consent each Lender and the Issuing Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Cash Management Bank, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Related Documents without the consent of the Administrative Agent or any other Lender, and the Issuing Lender, Administrative Agent and the Borrower may make customary technical amendments if any Letter of Credit shall be issued hereunder in a currency other than U.S. Dollars. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment or Term Loan Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower requests that this Agreement or any of the other Loan Documents be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower, the Administrative Agent and the Required Lenders, this Agreement or such other Loan Document may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a "***Minority Lender***"), to provide for:

(i) the termination of the Commitment of each such Minority Lender;

(ii) the assumption of the Loans and Commitment of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and

(iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) [Reserved].

(d) Notwithstanding any other provision, no consent of any Lender (or other Secured Party other than the Administrative Agent) shall be required to effectuate any amendment to implement any Incremental Facility permitted by Section 2.27 or to effect an alternate interest rate in a manner consistent with Section 2.17.

(e) Notwithstanding any provision herein to the contrary, any Cash Management Agreement and Specified Swap Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

(f) Notwithstanding any provision herein or in any other Loan Document to the contrary, no Cash Management Bank and no Qualified Counterparty shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of Cash Management Services or Specified Swap Agreements or Obligations owing thereunder, nor shall the consent of any such Cash Management Bank or Qualified Counterparty, as applicable, be required for any matter, other than in their capacities as Lenders, to the extent applicable.

(g) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the Loan Documents to cure any omission, mistake or defect.

10.2 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set

forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower:	Accuray Incorporated 1310 Chesapeake Terrace Sunnyvale, CA 94089 Attention: Shig Hamamatsu Telephone No.: +1.408.789.4424 E-Mail: shamamatsu@accuray.com
	with a copy (which shall not constitute notice) to:
	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Attention: John Perry E-Mail: john.perry@davispolk.com
Administrative Agent:	Silicon Valley Bank 275 Grove Street Newton, MA 02466 Attention: Peter Benham E-Mail: pbenham@svb.com
	With a copy (which shall not constitute notice) to:
	Morrison & Foerster LLP 200 Clarendon Street Boston, Massachusetts 02116 Attention: Charles W. Stavros, Esq. E-Mail: cstavros@mofo.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(h) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent and the Borrower otherwise prescribe, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at

its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(i) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(j) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "***Agent Parties***") have any liability to the Borrower or the other Loan Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform. "***Communications***" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay or reimburse (i) all reasonable, documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Administrative Agent and one local counsel in each reasonably necessary jurisdiction retained by the Administrative Agent in consultation with the Borrower), in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable,

documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of one primary counsel for the Administrative Agent and the Lenders (which shall be counsel to the Administrative Agent), one local counsel in each reasonably necessary jurisdiction retained by the Administrative Agent) and, solely in the case of a conflict of interest, one additional counsel and, to the extent reasonably necessary, one local counsel in each reasonably necessary jurisdiction to each group of similarly situated Persons actually affected by such conflict taken as a whole)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an "***Indemnitee***") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Group Members, or any Environmental Liability related in any way to the Group Members, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) are determined by a court of competent jurisdiction by final and nonappealable judgment to have not resulted from an act or omission by any Group Member and have been brought by an Indemnified Party against any other Indemnified Party (other than disputes involving SVB, solely in its capacity as Administrative Agent). This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Each Indemnitee shall promptly notify the Borrower in writing of any such claim, litigation, investigation or proceeding and shall grant the Borrower consultation rights over defense and settlement, and shall reasonably cooperate in response to the Borrower's request for assistance.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such

sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower and each other Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the Discharge of Obligations.

10.6 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which, for purposes of this Section 10.6, shall include any Cash Management Bank and any Qualified Counterparty, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of Section 10.6(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "***Trade Date***" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Facility, or the Term Loan Facility, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned, or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section 10.6 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Facility or any unfunded Commitments with respect to the Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lender and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment**.** The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) any Disqualified Lender so long as no Specified Event of Default has occurred and is continuing.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as

a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in California a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a Disqualified Lender (but only so long as no Specified Event of Default has occurred and is continuing at the time of such participation), a natural Person, a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered by such Participant to the Lender granting such participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 2.23 as if it were an assignee under Section 10.6(b); and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information

relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments or Loans, as the case may be, represents and warrants as of the Effective Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Commitments and Loans; and (iii) it will make or invest in its Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

10.7 Adjustments; Set-off.

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "***Benefitted Lender***") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being expressly waived by each Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency,

at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of any Loan Party, as the case may be, against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

10.8 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the Discharge of Obligations.

10.9 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "***Maximum Rate***"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Electronic Execution of Assignments.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to

constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of an original executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Administrative Agent.

(b) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.11 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.12 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.13 GOVERNING LAW. **THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.** This Section 10.13 shall survive the Discharge of Obligations.

10.14 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) agrees that all disputes, controversies, claims, actions and other proceedings involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement, any other Loan Document, any contemplated transactions related hereto or thereto, or the relationship between any Loan Party, on the one hand, and the Administrative Agent or any Lender or any other Secured Party, on the other hand, and any and all other claims of any Group Member against the Administrative Agent or any Lender or any other Secured Party of any kind, shall be brought only in a state court located in the Borough of Manhattan or the Southern District of New York, or in a federal court sitting in the Borough of Manhattan or the Southern District of New York; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender or any other Secured Party

from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender or any other Secured Party. The Borrower, on behalf of itself and each other Loan Party, (i) expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court and to the selection of any referee referred to below, (ii) hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum *non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court, and (iii) agrees that it shall not file any motion or other application seeking to change the venue of any such suit or other action. The Borrower, on behalf of itself and each other Loan Party, hereby waives personal service of any summons, complaints, and other process issued in any such action or suit and agrees that service of any such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) **WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY, AMONG ANY OF THE PARTIES HERETO AND THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. BORROWER HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;** and

(a) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages; provided that nothing contained herein shall limit the right of any Indemnitee to be indemnified as provided in this Agreement and the other Loan Documents.

This Section 10.14 shall survive the Discharge of Obligations.

10.15 Acknowledgements. Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) in connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower, on behalf of each Group Member, acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, and the Lenders and any Affiliate thereof are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective applicable Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, its Affiliates, each Lender and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Loan Party or any of their respective Affiliates, or any

other Person and (B) neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, its Affiliates, the Lenders and their Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, its Affiliates, each Lender and any of their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Group Members and the Lenders.

10.16 Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral (other than any cash collateral securing any Specified Swap Agreements, any Cash Management Services or outstanding Letters of Credit) shall be released from the Liens created by the Security Documents and Cash Management Agreements (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements), and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents and Cash Management Agreements (other than any Cash Management Agreements used to Cash Collateralize any Obligations arising in connection with Cash Management Agreements) shall terminate, all without delivery of any instrument or performance of any act by any Person.

10.17 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments

are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating any Group Member or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower. In addition, the Administrative Agent, the Lenders, and any of their respective Related Parties, may (A) disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments; and (B) use any information (not constituting Information subject to the foregoing confidentiality restrictions) related to the syndication and arrangement of the credit facilities contemplated by this Agreement in connection with marketing, press releases, or other transactional announcements or updates provided to investor or trade publications, including the placement of "tombstone" advertisements in publications of its choice at its own expense.

Each of the Administrative Agent, the Lenders, and the Issuing Lender acknowledges that (x) the Information may include material non-public information concerning the Group Members, (y) it has developed compliance procedures regarding the use of material non-public information, and (z) it will handle such material non-public information in accordance with applicable Requirements of Law, including applicable federal and state securities laws, rules and regulations.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws, rules, and regulations.

For purposes of this Section, "***Information***" means all information received from the Group Members relating to the Group Members or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Group Members; provided that, in the case of information received from the Group Members after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

10.18 Automatic Debits. With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of the Administrative Agent or any Lender payable by the Borrower hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

10.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the "***Judgment Currency***") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "***Agreement Currency***"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

10.20 Patriot Act; Other Regulations. Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and 31 C.F.R. § 1010.230, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party and certain related parties thereto, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower, each other Loan Party and certain of their beneficial owners and other officers in accordance with the Patriot Act and 31 C.F.R. § 1010.230. The Borrower and each other Loan Party will, and will cause each of their respective Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and documents and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with "know your customer" requirements under the PATRIOT Act, 31 C.F.R. § 1010.230 or other applicable anti-money laundering laws.

10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.22 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties hereto hereby acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regime**s") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Covered Entity**" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[*Remainder of page left blank intentionally*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

ACCURAY INCORPORATED

By: /s/ Shig Hamamatsu

Name: Shig Hamamatsu

Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: /s/ Tom Caramanico

Name: Tom Caramanico

Title: Director

LENDERS:

SILICON VALLEY BANK,
as Issuing Lender, Swingline Lender and as a Lender

By: /s/ Peter M. Benham

Name: Peter M. Benham

Title: Managing Director

HSBC BANK US, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Vanessa Printz

Name: Vanessa Printz

Title: Senior Vice President

[Signature Page to Credit Agreement]

COMERICA BANK,
as a Lender

By: /s/ Hiroya Suzuki

Name: Hiroya Suzuki

Title: Vice President

[Signature Page to Credit Agreement]

EXHIBIT A

Form of Guarantee and Collateral Agreement

(Please see attached form)

GUARANTEE AND COLLATERAL AGREEMENT

Dated as of May [__], 2021

made by

ACCURAY INCORPORATED,
as the Borrower,

and the other Grantors referred to herein,

in favor of

SILICON VALLEY BANK,
as Administrative Agent

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

SCHEDULES

ANNEXES

GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT (this "***Agreement***"), dated as of May [__], 2021, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, each a "***Grantor***" and, collectively, the "***Grantors***"), in favor of SILICON VALLEY BANK, as administrative agent and collateral agent (together with its successors, in such capacities, the "***Administrative Agent***") for the banks and other financial institutions or entities (each a "***Lender***" and, collectively, the "***Lenders***") from time to time parties to that certain Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the "***Credit Agreement***"), among ACCURAY INCORPORATED, a Delaware corporation (the "***Borrower***"), the Lenders party thereto, and the Administrative Agent.

INTRODUCTORY STATEMENTS

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, pursuant to that certain Credit Agreement, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective business;

WHEREAS, certain of the Qualified Counterparties may enter into Specified Swap Agreements with the Borrower;

WHEREAS, the Cash Management Banks may enter into Cash Management Agreements with the Grantors;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor derives substantial direct and indirect benefit from the extensions of credit under the Credit Agreement, the Cash Management Agreements, and from the Specified Swap Agreements; and

WHEREAS, it is a condition precedent to the Closing Date that the Grantors shall have executed and delivered this Agreement in favor of the Administrative Agent for the benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree as follows:

SECTION 1. **Defined Terms.**

1.1 Definitions.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the respective meanings given to such terms in the Credit Agreement, and the following terms are used herein as defined in the UCC: Account, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Document, Equipment, Farm Products,

Fixtures, General Intangible, Goods, Instrument, Inventory, Letter-of-Credit Rights, Money, Securities Account and Supporting Obligation.

(b) The following terms shall have the following meanings:

"***Administrative Agent***": as defined in the preamble hereto.

"***Agreement***": as defined in the preamble hereto.

"***Books***": all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (a) ledgers; (b) records indicating, summarizing, or evidencing such Grantor's assets (including Inventory and Rights to Payment), business operations or financial condition; (c) computer programs and software; (d) computer discs, tapes, files, manuals, spreadsheets; (e) computer printouts and output of whatever kind; (f) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (g) any and all other rights now or hereafter arising out of any contract or agreement between such Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of such Grantor's books or records or with credit reporting, including with regard to any of such Grantor's Accounts.

"***Borrower***": as defined in the preamble hereto.

"***Collateral***": as defined in Section 3.1.

"***Collateral Account***": any collateral account established by the Administrative Agent as provided in Section 6.1 or 6.4.

"***Copyright License***": any written agreement which (a) names a Grantor as licensor or licensee with respect to a Copyright, or (b) grants any right under any Copyright to a Grantor, including any rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"***Copyrights***": (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, together with the underlying works of authorship (including titles), whether registered or unregistered and whether published or unpublished (including those listed on Schedule 6), all computer programs, computer databases, computer program flow diagrams, source codes and object codes, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (b) the right to obtain any renewals thereof.

"***Deposit Account***": as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including any demand, time, savings, passbook or like account maintained with a depositary institution.

"***Excluded Accounts***": any Deposit Account or Securities Account (a) the sole purpose of which is for funding payroll, workers' compensation claims, 401(k) benefits, health care benefits, retirement benefits or other employee benefits, or which is a withholding tax or fiduciary account or similar operational disbursement account, (b) the sole purpose of which is for funding escrow arrangements or holding funds owned by persons other than a Group Member, (c) which is a zero-balance account, or (d) any account that, when combined with the account balance of all other accounts (other than Deposit Accounts and Securities Accounts described in clauses (a) and (b) above) over which the Administrative Agent does not have "control" (within the meanings of Section 8-106 and 9-106 of the UCC), has an average balance of less than $4,000,000 or (e) Deposit Accounts or Securities Accounts, established as cash collateral expressly permitted under Section 7.3 of the Credit Agreement.

"***Excluded Assets***": collectively,

(a) any property or asset owned by any Grantor on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money obligation or Capital Lease Obligation not prohibited by the terms of the Credit Agreement if the contract or other agreement pursuant to which such Lien is granted (or the documentation providing for such purchase money obligation or Capital Lease Obligation) validly prohibits the creation of any other Lien on such property or asset and/or proceeds of such property or asset;

(b) any Collateral with respect to which the Administrative Agent has determined, in consultation with the Borrower, that the costs of obtaining a security interest in such Collateral are excessive in relation to the benefits provided to the Secured Parties by such security interest;

(c) any (i) real property leasehold interests and (ii) owned real property of any Grantor that in the aggregate has a fair market value of less than $5,000,000 (or such greater amount as the Administrative Agent may agree in its sole discretion);

(d) margin stock (within the meaning of Regulation U issued by the Board) to the extent the creation of a security interest therein in favor of the Administrative Agent (for the benefit of the Secured Parties) will result in a violation of Regulation U issued by the Board;

(e) any Capital Stock (other than Capital Stock of a Loan Party or a wholly-owned Subsidiary thereof) if the granting of a security interest in such Capital Stock is prohibited by the applicable joint venture, shareholder, stock purchase or similar agreement (after giving effect to the UCC or any other applicable law (including the Bankruptcy Code) or principles of equity);

(f) motor vehicles and other equipment covered by certificates of title;

(g) voting Capital Stock of any direct Foreign Subsidiary or Foreign Subsidiary Holding Company that is not a Loan Party in excess of 66% of the total outstanding voting Capital Stock of any such entity if pledging a greater amount of such voting Capital Stock could reasonably be expected to result in material adverse tax consequences to the Group Members; provided that for the avoidance of doubt in no case shall the non-voting Capital Stock of such Subsidiary be an Excluded Asset; provided further that, if a change in law eliminates such material adverse tax consequences, such voting Capital Stock shall cease to be an Excluded Asset, 100% of all such voting Capital Stock shall be pledged (it being understood that for the avoidance of doubt, the Capital Stock of each Foreign Subsidiary that is a Loan Party shall not be an Excluded Asset and

100% of the Capital Stock of each Foreign Subsidiary that is a Loan Party shall be required to be pledged).

(h) any intent-to-use United States Trademark application for which neither (i) an amendment to allege use to bring the application into conformity with 15 U.S.C. § 1051(a) has been filed with and accepted by the United States Patent and Trademark Office, nor (ii) a verified statement of use under 15 U.S.C. § 1051(d) has been filed with and accepted by the United States Patent and Trademark Office; and

(i) Excluded Accounts;

provided, however, that any Proceeds, substitutions or replacements of any Excluded Assets shall not be Excluded Assets (unless such Proceeds, substitutions or replacements are otherwise, in and of themselves, Excluded Assets).

"***Fraudulent Transfer Laws***": as defined in Section 2.1(e).

"***Grantor***": as defined in the preamble hereto.

"***Guarantor***": as defined in Section 2.1(a).

"***Intellectual Property Licenses***": the collective reference to the Copyright Licenses, the Patent Licenses and the Trademark Licenses.

"***Investment Account***": any of a Securities Account, a Commodity Account or a Deposit Account.

"***Investment Property***": the collective reference to (a) all "investment property" as such term is defined in Section 9-102(a)(49) of the UCC (other than Excluded Assets), and (b) whether or not constituting "investment property" as so defined, all Pledged Notes and all Pledged Collateral.

"***Issuer***": with respect to any Investment Property, the issuer of such Investment Property.

"***Patent License***": any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right under a Patent, including the right to manufacture, use or sell any invention covered in whole or in part by such Patent.

"***Patents***": (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof, including, without limitation, any of the foregoing referred to on Schedule 6, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to on Schedule 6, and (c) all rights to obtain any reissues or extensions of the foregoing.

"***Pledged Collateral***": (a) any and all Pledged Stock; (b) all other Investment Property of any Grantor; (c) all warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of the direct or indirect Subsidiaries of such Grantor or of any other Person; (d) all Instruments; (e) all securities, property, interest, dividends and other payments

and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (f) all certificates and instruments now or hereafter representing or evidencing any of the foregoing; (g) all rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents; and (h) all cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor; provided that in no event shall Pledged Collateral include any Excluded Asset.

"***Pledged Collateral Agreements***": as defined in Section 5.23.

"***Pledged Notes***": all promissory notes listed on Schedule 2 and all other promissory notes issued to or held by any Grantor, provided that in no event shall Pledged Notes include any Excluded Asset.

"***Pledged Stock***": all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of any Grantor's direct Subsidiaries now or hereafter owned by any such Grantor and including the Capital Stock listed on Schedule 2 hereof (as amended or supplemented from time to time); provided that in no event shall Pledged Stock include any Excluded Assets.

"***Proceeds***": all "proceeds" as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all dividends or other income from any Investment Property constituting Collateral and all collections thereon or distributions or payments with respect thereto.

"***Receivable***": any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Account).

"***Rights to Payment***": any and all of any Grantor's Accounts and any and all of any Grantor's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

"***Secured Obligations***": collectively, the "Obligations", as such term is defined in the Credit Agreement.

"***Trademark License***": any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right to use any Trademark.

"***Trademarks***": (a) all trademarks, trade names, trade dress, service marks, logos, Internet domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including,

without limitation, any of the foregoing referred to on Schedule 6, and (b) the right to obtain all renewals thereof.

1.2 Other Definitional Provisions. The rules of interpretation set forth in Section 1.2 of the Credit Agreement are by this reference incorporated herein, *mutatis mutandis*, as if set forth herein in full.

SECTION 2. **Guarantee.**

2.1 Guarantee.

(a) Each Grantor, including the Borrower, who has executed this Agreement as of the date hereof, together with each Subsidiary of any Grantor who accedes to this Agreement as a Grantor after the date hereof pursuant to Section 6.12 of the Credit Agreement (each a "***Guarantor***" and, collectively, the "***Guarantors***"), hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (other than those Obligations that are direct obligations of such Guarantor). In furtherance of the foregoing, and without limiting the generality thereof, each Guarantor agrees as follows:

(i) each Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon the Administrative Agent's or any Secured Party's exercise or enforcement of any remedy it or they may have against the Borrower, any Guarantor, any other Person, or all or any portion of the Collateral; and

(ii) the Administrative Agent may enforce this guaranty notwithstanding the existence of any dispute between any of the Secured Parties and the Borrower or any Guarantor with respect to the existence of any Event of Default.

(b) Each Guarantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Administrative Agent or any other Secured Party hereunder.

(c) The guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of Obligations, notwithstanding that from time to time during the term of the Credit Agreement the outstanding amount of the Secured Obligations may be zero.

(d) No payment made by the Borrower, any Guarantor, any other guarantor or any other Person or received or collected by the Administrative Agent or any other Secured Party from the Borrower, any Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations),

remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Discharge of Obligations.

(e) Any term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Agreement or any other Loan Document, as it relates to such Guarantor, subject to avoidance under requirements of applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and the Bankruptcy Code or any applicable provisions of comparable Requirements of Law) (collectively, "Fraudulent Transfer Laws"). Any analysis of the provisions of this Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.2, and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under this Agreement.

2.2 Right of Contribution. If in connection with any payment made by any Guarantor hereunder any rights of contribution arise in favor of such Guarantor against one or more other Guarantors, such rights of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the other Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the other Secured Parties for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any setoff or application of funds of any Guarantor by the Administrative Agent or any other Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any other Secured Party against the Borrower or any other Guarantor or any Collateral or guarantee or right of offset held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, in each case, until the Discharge of Obligations. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time prior to the Discharge of Obligations, such amount shall be held by such Guarantor in trust for the Administrative Agent and the other Secured Parties, shall be segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied in such order as set forth in Section 6.5 hereof irrespective of the occurrence or the continuance of any Event of Default.

2.4 Amendments, etc. with respect to the Secured Obligations. Subject to Section 10.16 of the Credit Agreement, each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by the Administrative Agent or any other Secured Party may be rescinded by the Administrative Agent or such Secured Party and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in

whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any other Secured Party, and the Credit Agreement, the other Loan Documents, the Specified Swap Agreements, the Cash Management Agreements and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, in accordance with their respective terms, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Administrative Agent or any other Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, increased, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor further waives:

(a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Secured Obligations;

(b) any right to require any Secured Party to marshal assets in favor of the Borrower, such Guarantor, any other Guarantor or any other Person, to proceed against the Borrower, any Guarantor or any other Person, to proceed against or exhaust any of the Collateral, except as otherwise expressly provided herein, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Secured Obligations or to comply with any other provisions of Section 9-611 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of any Secured Party whatsoever;

(c) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Secured Obligations;

(d) any defense arising by reason of any lack of corporate or other authority or any other defense of the Borrower, such Guarantor or any other Person;

(e) any defense based upon the Administrative Agent’s or any Secured Party’s errors or omissions in the administration of the Secured Obligations;

(f) any rights to set-offs and counterclaims; and

(g) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by any applicable law that limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement, including all rights and defenses (i) arising out of an election of remedies by any Secured Party, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Guarantor's rights of subrogation and reimbursement against any applicable Loan Party by the operation of Section 580 or 726 of the California Code of Civil Procedure or otherwise, and (ii) relating to any suretyship defenses available to it under the California UCC or any other applicable law, including any rights and defenses which are or may become available to such Guarantor by reason of California Civil Code Sections 1432, 2787 through 2855, 2899, and 3433 or California Code of Civil Procedure Sections 580 or 726.

Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (1) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any other Secured Party, (2) any defense, setoff or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Administrative Agent or any other Secured Party, (3) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower and the Guarantors for the Secured Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance, (4) any Insolvency Proceeding with respect to the Borrower, any Guarantor or any other Person, (5) any merger, acquisition, consolidation or change in structure of the Borrower, any Guarantor or any other Person, or any sale, lease, transfer or other disposition of any or all of the assets or Capital Stock of the Borrower, any Guarantor or any other Person (other than a sale or other transfer pursuant to which such Guarantor becomes an Excluded Subsidiary or is no longer a Subsidiary of the Borrower and is subsequently released from its obligations hereunder), (6) any assignment or other transfer, in whole or in part, of any Secured Party's interests in and rights under this Agreement or the other Loan Documents, including any Secured Party's right to receive payment of the Secured Obligations, or any assignment or other transfer, in whole or in part, of any Secured Party's interests in and to any of the Collateral, (7) any Secured Party's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding related to any of the Secured Obligations, and (8) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Secured Obligations or any other indebtedness, obligations or liabilities of any Guarantor to any Secured Party.

When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any other Secured Party may, but shall be under no obligation to make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto. Any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower,

any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any other Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Each Guarantor acknowledges that all or any portion of the Secured Obligations may now or hereafter be secured by a Lien or Liens upon real property owned by any Borrower or any other Guarantor and evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Any Secured Party may, pursuant to the terms of said real property security documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Each Guarantor agrees that any Secured Party may exercise whatever rights and remedies it may have with respect to said real property security, all without affecting the liability of any Guarantor hereunder, except to the extent such Secured Party realizes payment by such action or proceeding. No election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of any Secured Party's right to proceed in any other form of action or against any Guarantor or any other Person, or diminish the liability of any Guarantor, or affect the right of such Secured Party to proceed against any Guarantor for any deficiency, except to the extent such Secured Party realizes payment by such action, notwithstanding the effect of such action upon any Guarantor's rights of subrogation, reimbursement or indemnity, if any, against any Borrower, any other Guarantor or any other Person. Without limiting the generality of the foregoing, each Guarantor expressly waives, to the extent permitted by law, all rights, benefits and defenses (other than payment in full), if any, applicable or available to such Guarantor.

Each Guarantor further unconditionally consents and agrees that, without notice to or further assent from any Guarantor: (A) the principal amount of the Secured Obligations may be increased or decreased and additional indebtedness or obligations of the Borrower or any other Persons under the Loan Documents may be incurred, by one or more amendments, modifications, renewals or extensions of any Loan Document in accordance with the terms thereof; (B) the time, manner, place or terms of any payment under any Loan Document may be extended or changed, including by an increase or decrease in the interest rate on any Secured Obligation or any fee or other amount payable under such Loan Document, by an amendment, modification or renewal of any Loan Document or otherwise; (C) the time for the Borrower's (or any other Loan Party's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as the Administrative Agent may deem proper; (D) in addition to the Collateral, the Secured Parties may take and hold other security (legal or equitable) of any kind, at any time, as collateral for the Secured Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (E) any Secured Party may discharge or release, in whole or in part, any other Guarantor or any other Loan Party or other Person liable for the payment and performance of all or any part of the Secured Obligations, and

may permit or consent to any such action or any result of such action, and shall not be obligated to demand or enforce payment upon any of the Collateral, nor shall any Secured Party be liable to any Guarantor for any failure to collect or enforce payment or performance of the Secured Obligations from any Person or to realize upon the Collateral, and (F) the Secured Parties may request and accept other guaranties of the Secured Obligations and any other indebtedness, obligations or liabilities of the Borrower or any other Loan Party to any Secured Party and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; in each case of clauses (A) through (F), as the Secured Parties may deem advisable, and without impairing, abridging, releasing or affecting this Agreement.

2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any such Guarantor or any substantial part of its respective property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without setoff or counterclaim in Dollars at the Funding Office.

2.8 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Agreement in respect of Secured Obligations under Specified Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 2.8 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.8 or otherwise under this Agreement, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.8 shall remain in full force and effect until the Discharge of Obligations. Each Qualified ECP Guarantor intends that this Section 2.8 constitute, and this Section 2.8 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 3. GRANT OF SECURITY INTEREST

3.1 Grant of Security Interests. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and wherever located (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (whether now existing or arising hereafter):

(a) all Accounts;

(b) all Chattel Paper;

(c) all Commercial Tort Claims (including as set forth on Schedule 8 hereto);

(d) all Deposit Accounts, all Securities Accounts, and all Commodity Accounts (in each case, other than Excluded Accounts);

(e) all Documents;

(f) all Equipment;

(g) all Fixtures;

(h) all General Intangibles;

(i) all Goods;

(j) all Instruments;

(k) all Intellectual Property and all Intellectual Property Licenses, and all claims for any infringement or other impairment thereof;

(l) all Inventory;

(m) all Investment Property (including all Pledged Collateral);

(n) all Letter-of-Credit Rights; Letters of Credit (as defined in the UCC), Promissory Notes (as defined in the UCC), and Drafts (as defined in the UCC);

(o) all Money;

(p) all Receivables;

(q) all Books and records pertaining to the Collateral;

(r) all other property not otherwise described above; and

(s) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing; provided, however, that notwithstanding anything to the contrary contained in clauses (a) through (r) above, the security interests created by this Agreement shall not extend to, and the term "Collateral" (including all of the individual items comprising Collateral) shall not include any Excluded Assets.

Notwithstanding any of the other provisions set forth in this Section 3, this Agreement shall not constitute a grant of a security interest in any Excluded Account or any other property to the extent that such grant of a security interest is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except (i) to the extent

that the terms in such contract, license, instrument or other document providing for such prohibition, breach, default or termination, or requiring such consent are not permitted under the terms and conditions of the Credit Agreement or (ii) to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such Requirement of Law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences. Notwithstanding anything in this Agreement to the contrary, United States intent-to-use trademark or service mark applications shall not be included in the Collateral (and shall be considered Excluded Assets) to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark or service mark applications under Federal law; provided, however, that after such period, each Grantor acknowledges that such interest in such trademark or service mark applications shall be subject to a security interest in favor of the Administrative Agent and shall be included in the Collateral (and shall no longer be considered an Excluded Asset).

3.2 Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such contracts, agreements and other documents included in the Collateral, and (c) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

3.3 Perfection and Priority.

(a) Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent (and its counsel and its agents) to file or record at any time and from time to time any financing statements and other filing or recording documents or instruments with respect to the Collateral and each Grantor shall execute and deliver to the Administrative Agent and each Grantor hereby authorizes the Administrative Agent (and its counsel and its agents) to file (with or without the signature of such Grantor) at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, Intellectual Property Security Agreements, assignments, fixture filings, affidavits, reports notices and all other documents and instruments, in such form and in such offices as the Administrative Agent reasonably determines is appropriate to perfect and continue the perfection of, maintain the priority of or provide notice of the Administrative Agent’s security interest in the Collateral under and to accomplish the purposes of this Agreement. Each Grantor

authorizes the Administrative Agent to use the collateral description "all personal property, whether now owned or hereafter acquired," "all assets" or any other similar collateral description in any such financing statements. Each Grantor hereby ratifies and authorizes the filing by the Administrative Agent (and its counsel and its agents) of any financing statement with respect to the Collateral made prior to the date hereof.

(b) Filing of Financing Statements. Each Grantor shall deliver to the Administrative Agent, from time to time, such completed UCC-1 financing statements for filing or recording in the appropriate filing offices as may be reasonably requested by the Administrative Agent.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in Section 5.6(b), each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to perfect a first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the benefit of the other Secured Parties pursuant to the UCC. To the extent practicable, each such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in Section 5.6(b).

(d) Intellectual Property. (i) Each Grantor shall, in addition to executing and delivering this Agreement, take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in the Intellectual Property constituting Collateral; provided that, notwithstanding anything herein or in the Credit Agreement to the contrary, no Grantor shall be required to make any filings, or take any other actions, in each case, with respect to perfecting the Administrative Agent's security interest in any Intellectual Property constituting Collateral of such Grantor outside of the United States or the jurisdiction of such Grantor's organization (collectively "Non-Domestic IP") unless otherwise requested by the Administrative Agent in writing after its determination in its reasonable discretion in consultation with the Borrower that the cost or other consequences of perfecting against such Non-Domestic IP of such Grantor is not excessive in view of the benefits to be obtained by the Lenders therefrom. (ii) Concurrently with the delivery of the list of Intellectual Property delivered by a Grantor pursuant to Section 6.2(b)(z) of the Credit Agreement, such Grantor shall modify this Agreement by amending Schedule 6 to include any applicable Intellectual Property which becomes part of the Collateral and which was not included on Schedule 6 as of such delivery and record an amendment to an existing Intellectual Property Security Agreement for recordation with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property; provided that, notwithstanding anything herein or in the Credit Agreement to the contrary, no Grantor shall be required to make any filings, or take any other actions, in each case, with respect to perfecting the Administrative Agent's security interest in any Non-Domestic IP, unless otherwise requested by the Administrative Agent in writing after its determination in its reasonable discretion in consultation with the Borrower that the cost or other consequences of perfecting against such Non-Domestic IP of such Grantor is not excessive in view of the benefits to be obtained by the Lenders therefrom.

(e) Bailees. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, each Grantor will join with the Administrative Agent in notifying any Person who has possession of any Collateral with a fair market value in excess of $5,000,000 of the Administrative Agent's security interest therein and shall use commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(f) Control. Except with respect to any Excluded Asset, each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property, Securities Accounts or Letter-of-Credit Rights with respect to Letters of Credit in excess of $4,000,000, including delivery of control agreements, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral.

(g) Additional Subsidiaries. To the extent required (including with respect to any applicable time periods for compliance) by the Credit Agreement, after the date hereof, in the event that any Grantor acquires rights in any Subsidiary after the date hereof (or if any Capital Stock of any Subsidiary no longer constitutes an Excluded Asset), it shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of Annex 2 (the "***Pledge Supplement***"), together with all schedules thereto, reflecting the pledge of the Capital Stock of such Subsidiary (except to the extent such Capital Stock consists of Excluded Assets). Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral related to such Subsidiary immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each other Secured Party that:

4.1 Title; No Other Liens. Except for the Liens permitted to exist on the Collateral by Section 7.3 of the Credit Agreement, such Grantor owns each item of the Collateral in which a Lien is granted by it free and clear of any and all Liens and other claims of others.

4.2 Perfected Liens. The security interests granted to the Administrative Agent pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly (if applicable) executed

form) will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against any creditors of any Grantor and any Persons purporting to purchase any Collateral from any Grantor, and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for (i) Liens permitted by the Credit Agreement which have priority over the Liens of the Administrative Agent on the Collateral (for the benefit of the Secured Parties) by operation of law, and (ii) in the case of Collateral other than Pledged Collateral, Liens permitted by Section 7.3 of the Credit Agreement.

4.3 Jurisdiction of Organization; Chief Executive Office and Locations of Books. On the date hereof, such Grantor's jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor's chief executive office or sole place of business, as the case may be, are specified on Schedule 4. On the date hereof, all locations where Books pertaining to the Rights to Payment of such Grantor are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for such Grantor, are set forth in Schedule 4.

4.4 Inventory and Equipment. On the date hereof (a) the Inventory and (b) the Equipment (other than mobile goods and assets with a fair market value of less than $5,000,000 in the aggregate) are kept at the locations listed on Schedule 5.

4.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6 Pledged Collateral. (a) All of the Pledged Stock held by such Grantor has been duly and validly issued, and is fully paid and non-assessable (to the extent applicable in the relevant jurisdiction), subject in the case of Pledged Stock constituting partnership interests or limited liability company membership interests to future assessments required under any applicable law and any applicable partnership or operating agreement, (b) such Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (c) in the case of Pledged Stock of a Subsidiary of such Grantor or Pledged Collateral of such Grantor constituting Instruments issued by a Subsidiary of such Grantor, there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or "Blue Sky" laws, (d) the Pledged Stock pledged by such Grantor constitutes all of the issued and outstanding shares of Capital Stock of each Issuer owned by such Grantor (except for Excluded Assets), and such Grantor owns no securities convertible into or exchangeable for any shares of Capital Stock of any such Issuer that do not constitute Pledged Stock hereunder, (e) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Stock pledged by such Grantor have been disclosed to the Administrative Agent, and (f) as to each such Pledged Collateral Agreement relating to the Pledged Stock pledged by such Grantor, (i) to the best knowledge of such Grantor, such Pledged Collateral Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms, (ii) to the best knowledge of such Grantor party thereto, there exists no material violation or material

default under any such Pledged Collateral Agreement by such Grantor or the other parties thereto, and (iii) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such Pledged Collateral Agreement.

4.7 Investment Accounts. (a) On the date hereof, Schedule 2 sets forth under the headings "Securities Accounts" and "Commodity Accounts", respectively, all of the Securities Accounts and Commodity Accounts in which such Grantor has an interest. Except as disclosed to the Administrative Agent, such Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent and except for the applicable securities intermediary, and commodities intermediary, as the case may be) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or any securities or other property credited thereto;

(b) On the date hereof, Schedule 2 sets forth the Excluded Accounts, and under the heading "Deposit Accounts," all of the Deposit Accounts in which such Grantor has an interest and, except as otherwise disclosed to the Administrative Agent, such Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent and except for the applicable depository bank) having either sole dominion and control (within the meaning of common law) or "control" (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account (except for Excluded Accounts) or any money or other property deposited therein; and

(c) To the extent the following property constitutes Collateral, such Grantor has taken all actions necessary or desirable to: (i) establish the Administrative Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any Certificated Securities (as defined in Section 9-102 of the UCC); (ii) within the time periods set forth in Section 5.4 of the Credit Agreement, establish the Administrative Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Accounts constituting Securities Accounts, Commodity Accounts, Securities Entitlements or Uncertificated Securities (each as defined in Section 9-102 of the UCC); (iii) within the time periods set forth in Section 5.4 of the Credit Agreement, establish the Administrative Agent's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts (except for Excluded Accounts) specified on Schedule 2; and (iv) deliver all Instruments (as defined in Section 9-102 of the UCC) to the Administrative Agent to the extent required hereunder.

4.8 Receivables. As of the date hereof, no amount payable to such Grantor under or in connection with any Receivable or other Right to Payment is evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account) or Chattel Paper, in each case with a value in excess of $1,000,000 in the aggregate, which has not been delivered to the Administrative Agent.

4.9 Intellectual Property. (a) Schedule 6 lists all registrations and applications for Intellectual Property (including, without limitation, registered Copyrights, Patents, Trademarks and all applications therefor) included in the Collateral.

(b) [Reserved].

(c) Except as permitted by the Credit Agreement, on the date hereof, none of the Intellectual Property included in the Collateral is the subject of any material exclusive licensing agreement pursuant to which such Grantor is the licensor.

4.10 Instruments. (i) Such Grantor has not previously assigned any interest in any Instruments (including but not limited to the Pledged Notes) held by such Grantor (other than such interests as will be released on or before the date hereof or as otherwise expressly permitted under the Credit Agreement), and (ii) no Person other than such Grantor and the holder of a Lien permitted pursuant to Section 7.3 of the Credit Agreement owns an interest in such Instruments (whether as joint holders, participants or otherwise).

4.11 Letter of Credit Rights. As of the date hereof, such Grantor does not have any Letter-of-Credit Rights having a potential value in excess of $4,000,000 except as set forth in Schedule 7 or as have been notified to the Administrative Agent in accordance with Section 5.22.

4.12 Commercial Tort Claims. As of the date hereof, such Grantor does not have any Commercial Tort Claims having a potential value in excess of $1,000,000 except as set forth in Schedule 8 or as have been notified to the Administrative Agent in accordance with Section 5.21.

SECTION 5. COVENANTS

In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account), Certificated Security or Chattel Paper evidencing an amount in excess of $1,000,000, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to the Administrative Agent, duly indorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance.

(a) The Grantors shall maintain insurance as required pursuant to Section 6.6 of the Credit Agreement.

(b) Except as otherwise agreed by the Administrative Agent, all applicable insurance policies shall (i) provide that no cancellation, material reduction in amount, material change in coverage, non-renewal or amendment thereof shall be effective until at least thirty (30)

days after delivery to the Administrative Agent of written notice thereof and (ii) name the Administrative Agent as an additional insured party or lender's loss payee, as applicable.

5.3 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain the security interests of the Administrative Agent (for the benefit of the Secured Parties) created by this Agreement as perfected security interests having at least the priority described in Section 4.2 and shall use commercially reasonable efforts to defend such security interests against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral and subject to the rights of a holder of Liens permitted by Section 7.3 of the Credit Agreement.

(b) Such Grantor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent may reasonably request, all in reasonable detail (such requests not to be made more than quarterly, other than while an Event of Default has occurred and is continuing).

(c) At any time and from time to time, upon the reasonable written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have filed or recorded, as applicable, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Investment Accounts, Letter-of-Credit Rights and any other relevant Collateral (giving effect to any thresholds or exceptions herein, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the UCC) with respect thereto to the extent required hereunder.

5.4 Changes in Locations, Name, Etc. Such Grantor will not, except upon seven (7) days (or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, and (b) if applicable, a written supplement to Schedule 4 showing the relevant new jurisdiction of organization, location of chief executive office or sole place of business, as appropriate:

(i) change its jurisdiction of organization, identification number from the jurisdiction of organization (if any) or the location of its chief executive office or sole place of business, as appropriate, from that referred to in Section 4.3; or

(ii) change its name.

5.5 Reserved].

5.6 Instruments; Investment Property.

(a) Upon the request of the Administrative Agent, if any Grantor shall have obtained or otherwise acquired any Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property, in each case with a value in excess of $1,000,000 in the aggregate, such Grantor will (i) promptly deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, and (ii) provide such notice, use commercially reasonable efforts to obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify to perfect a security interest therein.

(b) If such Grantor shall become entitled to receive or shall receive any certificate (including any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, and such Grantor would have been required to take actions with respect to such property under Section 5.6(a) if it had been obtained by other means, then such Grantor shall accept the same as the agent of the Administrative Agent and the other Secured Parties, hold the same in trust for the Administrative Agent and the other Secured Parties and deliver the same concurrently with the Compliance Certificate to be delivered more than fourteen (14) days following the receipt thereof to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so reasonably requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations; provided that in no event shall this Section 5.6(b) apply to any Excluded Assets.

(c) In the case of any Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Capital Stock issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly (to the extent any action would be required to be taken in response to such events under Sections 5.6(a) and (b)) in writing of the occurrence of any of the events described in Section 5.6(a) and (b) with respect to the Pledged Collateral issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 with respect to the Capital Stock issued by it.

5.7 Securities Accounts; Deposit Accounts.

(a) With respect to any Securities Account that is not an Excluded Account, such Grantor shall cause such securities intermediary to enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent with respect to such Securities

Account pursuant to which such securities intermediary shall agree to comply with the Administrative Agent's "entitlement orders" without further consent by such Grantor; and

(b) with respect to any Deposit Account (other than the Excluded Accounts), such Grantor shall enter into and shall cause the depositary institution maintaining such account to enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the Administrative Agent shall be granted "control" (within the meaning of Section 9104 of the UCC) over such Deposit Account.

(c) The Administrative Agent agrees that it will only communicate "entitlement orders" or "notices of exclusive control" or similar instructions with respect to the Deposit Accounts and Securities Accounts of the Grantors after the occurrence and during the continuance of an Event of Default.

(d) Such Grantor shall give the Administrative Agent prompt notice of the establishment of any new Deposit Account and of any new Securities Account, in each case that is not an Excluded Account, established by such Grantor, and shall comply with the requirements of Sections 5.7(a) and (b) with respect to such new Deposit Account or Securities Account.

5.8 Intellectual Property.

(a) Except as otherwise permitted by the Credit Agreement, such Grantor will, and will use commercially reasonable efforts to cause its licensees to, not knowingly do any act or knowingly omit to do any act whereby any material issued, registered or applied for Trademark, Patent or Copyright, in each case, included in the Collateral, may become forfeited, abandoned, dedicated to the public or invalidated in any way.

(b) Such Grantor will, and will use commercially reasonable efforts to cause its licensees to, not do any act that knowingly uses any material Intellectual Property owned by such Grantor included in the Collateral to infringe the Intellectual Property rights of any other Person.

(c) Such Grantor will notify the Administrative Agent as promptly as reasonably practicable (i) if it knows that any application or registration relating to any material Intellectual Property included in the Collateral may become forfeited, abandoned or dedicated to the public, or (ii) of any material adverse determination or development (including, without limitation, any such material adverse determination or development in any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country, but excluding typical communications in the ordinary course or prosecution, such as office actions and the like) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property included in the Collateral or such Grantor's right to register the same or to own and maintain the same, unless such Grantor has determined that, as applicable, such forefeiture, abandonment, dedication to the public, determination or development is not reasonably likely to materially adversely affect the interests of the Secured Parties.

(d) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Patent or Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or political subdivision (except for any Excluded Asset) thereof, such Grantor shall report (i) the

initial application to and (ii) the corresponding grant, if any, of the Patent or Trademark from the United States Patent and Trademark Office to the Administrative Agent, in each case in accordance with Section 6.2(b)(z) of the Credit Agreement. Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright with the United States Copyright Office, such Grantor shall report the filing of the initial application to the Administrative Agent in accordance with Section 6.2(b)(z) of the Credit Agreement. Upon the reasonable written request of the Administrative Agent, other than in respect of intent-to-use trademark or service mark applications, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may reasonably request to evidence the Administrative Agent's and the other Secured Parties' security interest in any Copyright, Patent or Trademark included in the Collateral and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(e) Except as otherwise permitted by the Credit Agreement, such Grantor will take all steps that it reasonably deems appropriate under the circumstances, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country, to (i) maintain and pursue each material United States Intellectual Property application of such Grantor included in the Collateral filed by or on behalf of such Grantor (and to obtain the relevant registration) and (ii) maintain each corresponding registration of such material United States Intellectual Property of such Grantor included in the Collateral, including, to the extent applicable, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(f) In the event that any material Intellectual Property included in the Collateral of a Grantor is infringed, misappropriated or diluted by a third party, such Grantor shall take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property.

5.9 [Reserved].

5.10 Defense of Collateral. Consistent with its reasonable business judgment, Grantors will use commercially reasonable efforts to appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent's right or interest in, any material portion of the Collateral.

5.11 Preservation of Collateral. Subject to Section 5.8, and except as otherwise permitted by the Credit Agreement, Grantors will do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral other than any Disposition that is permitted by Section 7.5 of the Credit Agreement or taking any action or inaction that could not reasonably be expected to materially adversely affect the interests of the Secured Parties.

5.12 [Reserved].

5.13 [Reserved].

5.14 Location of Collateral. Such Grantor will: (a) keep all material Collateral held by such Grantor at the locations set forth in Schedule 5 or at such other locations as may be disclosed in writing to the Administrative Agent pursuant to clause (b) and will not remove any such Collateral from such locations (other than in connection with sales of Inventory in the ordinary course of such Grantor's business, the movement of such Collateral as part of such Grantor's supply chain and in the ordinary course of such Grantor's business, other dispositions permitted by Section 7.5 of the Credit Agreement, movements of Collateral from one disclosed location to another disclosed location within the United States and the movement assets having a value of less than $5,000,000 in the aggregate), except upon at least seven (7) days' (or such shorter period as may be agreed to by the Administrative Agent) prior written notice of any removal to the Administrative Agent; and (b) give the Administrative Agent at least seven (7) days' (or such shorter period as may be agreed to by the Administrative Agent) prior written notice of any change in the locations set forth in Schedule 5.

5.15 [Reserved].

5.16 [Reserved].

5.17 Liens. Such Grantor will keep the Collateral held by such Grantor free of all Liens except Liens permitted under Section 7.3 of the Credit Agreement.

5.18 Expenses. Such Grantor will pay all customary expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral held by such Grantor, to the extent the failure to pay any such expenses could reasonably be expected to materially and adversely affect the value of the Collateral.

5.19 [Reserved].

5.20 Chattel Paper. Such Grantor will not create any Chattel Paper without placing a legend on such Chattel Paper acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper. Concurrently with the next subsequent Compliance Certificate to be delivered (or, if later, within seven (7) days (or such longer period as the Administrative Agent may agree) after such acquisition), such Grantor will give the Administrative Agent notice if such Grantor at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper and shall comply, in all respects, with the provisions of Section 5.1 hereof.

5.21 Commercial Tort Claims. Concurrently with the next subsequent Compliance Certificate to be delivered (or, if later, within seven (7) days (or such longer period as the Administrative Agent may agree) after such acquisition), such Grantor will give the Administrative Agent notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim with a potential value in excess of $1,000,000.

5.22 Letter-of-Credit Rights. Concurrently with the next subsequent Compliance Certificate to be delivered (or, if later, within seven (7) days (or such longer period as the Administrative Agent may agree) after such acquisition), such Grantor will give the Administrative Agent notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights with a potential value in excess of $1,000,000.

5.23 Shareholder Agreements and Other Agreements.

(a) Such Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other written agreement or written understanding (collectively, the "***Pledged Collateral Agreements***") to which it is a party and shall enforce all of its rights thereunder, except, with respect to any such Pledged Collateral Agreement relating to any Pledged Collateral issued by a Person other than a Subsidiary of a Grantor, to the extent the failure to enforce any such rights could not reasonably be expected to materially and adversely affect the value of the Pledged Collateral to which any such Pledged Collateral Agreement relates.

(b) Such Grantor agrees that no Pledged Stock (i) shall be dealt in or traded on any securities exchange or in any securities market, (ii) shall constitute an investment company security, or (iii) shall be held by such Grantor in a Securities Account.

(c) Subject to the terms and conditions of the Credit Agreement, including Sections 7.3 and 7.5 thereof, such Grantor shall not vote to enable or take any other action to amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

5.24 Government Receivables. Such Grantor will notify the Administrative Agent of any Accounts in excess of $1,000,000 in the aggregate in which the Account Debtor is a United States government entity or any department, agency or instrumentality thereof, and, if reasonably requested by the Administrative Agent, Grantors shall submit the documentation required under the Assignment of Claims Act to the government of the United States seeking approval of the novation or assignment of each contract relating to such Accounts and deliver to the Administrative Agent such documentation reasonably necessary to comply with the Assignment of Claims Act with respect to the assignment of the right of payment in respect of all contracts relating to such Accounts.

SECTION 6. REMEDIAL PROVISIONS

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

6.1 Certain Matters Relating to Receivables.

(a) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables, and the Administrative Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Administrative Agent if required, in a Collateral Account over which the Administrative Agent has control, subject to withdrawal by the Administrative Agent for the account of the Secured Parties only as provided in Section 6.5, and (ii) until so turned

over, shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor. After the occurrence and during the continuance of an Event of Default, each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At the Administrative Agent's reasonable request, after the occurrence and during the continuance of an Event of Default, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

6.2 Communications with Obligors; Grantors Remain Liable.

(a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of the Administrative Agent, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that a security interest in the Receivables has been granted to the Administrative Agent for the benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each agreement giving rise to the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any agreement giving rise to any Receivable by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent nor any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any agreement giving rise to a Receivable), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given written notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Collateral and all payments made in respect of the Pledged Notes to the extent not prohibited by the Credit Agreement, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property of such Grantor; provided, however, that no vote shall be cast or corporate or other

organizational right exercised or other action taken that would result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right (A) to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property (including the Pledged Collateral) of any or all of the Grantors and make application thereof to the Secured Obligations in the order set forth in Section 6.5, and (B) to exchange uncertificated Pledged Collateral for certificated Pledged Collateral and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement (in each case to the extent such exchanges are permitted under the applicable Pledged Collateral Agreements or otherwise agreed upon by the Issuer of such Pledged Collateral), and (ii) any and all of such Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of any such Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing. In order to permit Administrative Agent to exercise the voting and consensual rights to which it may be entitled hereunder and to receive all dividends and other distributions to which it may be entitled to receive hereunder, each Grantor shall promptly execute and deliver to Administrative Agent all such proxies, dividend payment orders and other instruments as Administrative Agent may from time to time reasonably request, and without limiting the foregoing, each Grantor hereby grants to Administrative Agent an IRREVOCABLE PROXY COUPLED WITH AN INTEREST to exercise, all the voting rights applicable to such Investment Property and to exercise all other rights, powers, privileges and remedies to which a holder of the Investment Property would be entitled, which proxy shall only be effective, automatically (and without any further action on the part of the Grantor or the Administrative Agent), upon the occurrence and during the continuance of an Event of Default; provided, that, such rights, powers, privileges and remedies shall terminate upon Discharge of Obligations.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Collateral or Pledged Notes pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted

hereby, pay any dividends or other payments with respect to the Pledged Collateral or, as applicable, the Pledged Notes directly to the Administrative Agent.

(d) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right to apply the balance from any Deposit Account (other than any Excluded Account) or Securities Account (other than any Excluded Account) or instruct the bank or securities intermediary at which any Deposit Account (other than any Excluded Account) or Securities Account (other than any Excluded Account) is maintained to pay the balance of any Deposit Account (other than any Excluded Account) or Securities Account (other than any Excluded Account) to or for the benefit of the Administrative Agent.

6.4 Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Administrative Agent and the other Secured Parties specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, and the Administrative Agent has given notice (which notice may be given contemporaneously) of its intent to exercise such rights to the relevant Grantor or Grantors, all Proceeds received by any Grantor consisting of cash, checks, Cash Equivalents and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account over which it maintains control, within the meaning of the UCC. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Administrative Agent and the other Secured Parties) shall continue to be held as collateral security for all the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

6.5 Application of Proceeds. If an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, in payment of the Secured Obligations in accordance with Section 8.3 of the Credit Agreement.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem

advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, in accordance with the provisions of Section 6.5, only after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the other Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as is contemplated by Section 8.3 of the Credit Agreement, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the UCC, but only to the extent of the surplus, if any, owing to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out of the exercise by any of them of any rights hereunder, except to the extent caused by the gross negligence or willful misconduct of the Administrative Agent or such Secured Party or their respective agents. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition. If an Event of Default has occurred and is continuing, Administrative Agent may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Grantor's Deposit Accounts in which Administrative Agent's Liens are perfected by control under Section 9-104 or any other section of the UCC, instruct the bank maintaining such Deposit Account for the applicable Grantor to pay the balance of such Deposit Account to or for the benefit of the Administrative Agent, and (ii) with respect to any Grantor's Securities Accounts in which Administrative Agent's Liens are perfected by control under Section 9-106 or any other section of the UCC, instruct the securities intermediary maintaining such Securities Account for the applicable Grantor to (A) transfer any cash in such Securities Account to or for the benefit of Administrative Agent, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Administrative Agent, in each case above, for application to and repayment of the Secured Obligations. Each Grantor hereby acknowledges that the Secured Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Administrative Agent shall have the right to an immediate writ of possession without notice of a hearing. Administrative Agent shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Administrative Agent.

6.7 Private Sale.

(a) [Reserved].

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Subject to its compliance with state securities laws applicable to private sales, the Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.7 valid and binding and in compliance with any applicable Requirement of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement. Notwithstanding anything set forth herein to the contrary, no Grantor shall have any duty to (or cause the Issuer of any Pledged Stock to) register the Pledged Stock under the provisions of the Securities Act.

6.8 Intellectual Property License. Solely for the purpose of enabling the Administrative Agent to exercise rights and remedies under this Section 6 and solely exercisable after the occurrence and during the continuance of an Event of Default, each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, an irrevocable, non-exclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor) to use, operate under, license, or sublicense any Intellectual Property included in the Collateral, subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, and, in the case of trade secrets, customary confidentiality and non-disclosure obligations sufficient to maintain and protect the confidential nature of such trade secrets.

6.9 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Secured Obligations and the reasonable fees and disbursements of any attorneys employed by the Administrative Agent or any other Secured Party to collect such deficiency.

SECTION 7. THE ADMINISTRATIVE AGENT

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that:

7.1 Administrative Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints (until the Discharge of Obligations) the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority, coupled with an interest, in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise reasonably deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property (except any Excluded Assets), execute and deliver, and have recorded, any and all agreements, instruments, documents and papers necessary to give effect to the license granted to the Administrative Agent pursuant to Section 6.8;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the

Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may reasonably deem appropriate; (G) (1) assign any Copyright, Patent or Trademark, in each case, included in the Collateral (along with the goodwill of the business to which any such Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine and (2) assign any Intellectual Property Licenses that are included as Collateral to which a Grantor is a party except to the extent that any implied prohibitions on assignment and any anti-assignment provision therein is not invalidated by Section 9-408 of the UCC; and (H) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent reasonably deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The reasonable and documented out-of-pocket expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of ABR Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any

other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the other Secured Parties hereunder are solely to protect the Administrative Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any other Secured Party to exercise any such powers. The Administrative Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, fraud or willful misconduct.

7.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement; provided, however, that with respect to any provision of this Agreement requiring delivery or the taking of an action by a certain date, the Administrative Agent may (without the consent of any other Person), in its reasonable discretion, extend any such deadline.

8.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon any Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default, as applicable. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such other Secured Party would otherwise have on

any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification.

(a) Each Grantor agrees to pay or reimburse the Administrative Agent and each other Secured Party for all its reasonable and documented costs and expenses incurred in collecting against such Grantor under the guaranty contained in Section 2 of this Agreement or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party to the same extent as the Borrower pursuant to Section 10.5 of the Credit Agreement.

(b) Each Grantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes (excluding Excluded Taxes, if any), which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement to the same extent as the Borrower pursuant to Section 10.5 of the Credit Agreement.

(c) Each Grantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to the Credit Agreement.

(d) The agreements in this Section 8.4 shall survive the Discharge of Obligations.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent and each other Secured Party and their respective successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6 Set Off. Each Grantor hereby irrevocably authorizes the Administrative Agent and each other Secured Party and any Affiliate thereof at any time and from time to time after the occurrence and during the continuance of an Event of Default, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to setoff and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Administrative Agent or such Secured Party or such Affiliate to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Administrative Agent or such Secured Party may elect, against and on account of the Secured Obligations and liabilities of such Grantor to the Administrative Agent or such Secured Party hereunder and under the other Loan Documents and claims of every nature and description of the Administrative Agent or such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as the Administrative Agent or such

Secured Party may elect, whether or not the Administrative Agent or any other Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured; provided that neither the Administrative Agent nor any other Secured Party shall exercise any right of set off in respect of any Excluded Account. The rights of the Administrative Agent and each other Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Administrative Agent or such other Secured Party may have.

8.7 Counterparts. This Agreement may be executed and delivered by one or more of the parties to this Agreement on any number of separate counterparts (including delivery by facsimile and/or electronic mail), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of an original executed counterpart hereof. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any other Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

8.11 **GOVERNING LAW**. **THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.** This Section 8.11 shall survive the Discharge of Obligations.

8.12 Submission to Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally agrees that the provisions of Sections 10.14(a) and (c) of the Credit Agreement (relating to submission to jurisdiction and waivers and the waiver of the right to claim or recover any special, exemplary, punitive or consequential damages) shall be incorporated herein, *mutatis mutandis*, as if set forth herein in full. This Section 8.12 shall survive the Discharge of Obligations.

8.13 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among any of the Secured Parties or among the Grantors and any of the Secured Parties.

8.14 Additional Grantors. Each Subsidiary of a Grantor that is required to become a party to this Agreement pursuant to Section 6.12 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15 Releases.

(a) Upon the Discharge of Obligations, the Collateral shall be automatically released from the Liens in favor of the Administrative Agent and the other Secured Parties created hereby, this Agreement shall terminate with respect to the Administrative Agent and the other Secured Parties, and all obligations (other than those expressly stated to survive such termination) of each Grantor to the Administrative Agent or any other Secured Party hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the sole expense of any Grantor following any such termination, the Administrative Agent shall promptly deliver such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor to a Person that is not a Grantor in a transaction permitted by Section 7 of the Credit Agreement, (i) such Collateral shall be automatically released from the Liens created hereby on such Collateral, and (ii) then the Administrative Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release or evidence of release of the Liens created hereby on such Collateral, as applicable. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be sold, transferred or otherwise disposed of to a Person other than a Grantor in a

transaction permitted by Section 7 of the Credit Agreement or shall otherwise be an Excluded Subsidiary (other than an Immaterial Subsidiary) or no longer a (direct or indirect) Subsidiary of the Borrower as a result of a transaction permited by Section 7 of the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days, or such shorter period as the Administrative Agent may agree, prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, together with a certification by the Borrower stating that such transaction is in compliance with terms and provisions of the Credit Agreement and the other Loan Documents. The Administrative Agent shall be entitled to rely (without any need for further investigation) and shall have no liability for relying on any such notice, certificate or other certification delivered pursuant to this paragraph.

8.16 **WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF, CONNECTED WITH, OR BASED UPON THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY; AND (B) AGREES, WITHOUT INTENDING IN ANY WAY TO LIMIT ITS AGREEMENT TO WAIVE ITS RIGHT TO A TRIAL BY JURY, THAT THE PROVISIONS OF SECTION 10.14(b) OF THE CREDIT AGREEMENT (RELATING TO THE WAIVER OF THE RIGHT TO JURY TRIAL) SHALL BE INCORPORATED HEREIN, *MUTATIS MUTANDIS*, AS IF SET FORTH HEREIN IN FULL. THIS WAIVER OF THE RIGHT TO JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL. THIS SECTION 8.16 SHALL SURVIVE THE DISCHARGE OF OBLIGATIONS.**

8.17 Patriot Act. Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies each Grantor that, pursuant to the requirements of "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and 31 C.F.R. § 1010.230, it is required to obtain, verify and record information that identifies such Grantor, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Grantor and certain of its beneficial owners and other officers in accordance with the Patriot Act and 31 C.F.R. § 1010.230. Each Grantor will, and will cause each of its Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with "know your customer" requirements under the PATRIOT Act, 31 C.F.R. § 1010.230 or other applicable anti-money laundering laws.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

GRANTOR:

ACCURAY INCORPORATED

By: _____
Name: _____
Title: _____

[OTHERS TBD]

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: _____
Name: _____
Title: _____

SCHEDULE 1

NOTICE ADDRESSES OF GUARANTORS

Guarantor	Notice Address
Borrower	

SCHEDULE 2

DESCRIPTION OF INVESTMENT PROPERTY

Pledged Stock:

Grantor	Issuer	Class of Capital Stock	Certificate No.	No. of Shares / Units

Pledged Notes:

Grantor	Issuer	Date of Issuance	Payee	Principal Amount

Securities Accounts:

Grantor	Securities Intermediary	Address	Account Number(s)

Commodity Accounts:

Grantor	Commodities Intermediary	Address	Account Number(s)

Deposit Accounts:

Grantor	Depositary Bank	Address	Account Number(s)

Excluded Accounts:

Grantor	Depositary Bank	Address	Account Number(s)

SCHEDULE 3

FILINGS AND OTHER ACTIONS
REQUIRED TO PERFECT SECURITY INTERESTS

Uniform Commercial Code Filings

Copyright, Patent and Trademark Filings

Other Actions

SCHEDULE 4

**LOCATION OF JURISDICTION OF ORGANIZATION,
CHIEF EXECUTIVE OFFICE AND LOCATION OF BOOKS**

Grantor	Jurisdiction of Organization	Organizational Identification Number	Location of Chief Executive Office	Location of Books

SCHEDULE 5

LOCATIONS OF EQUIPMENT AND INVENTORY

Grantor	Address Location

SCHEDULE 6

ISSUED PATENTS AND PATENT APPLICATIONS

REGISTERED TRADEMARKS AND TRADEMARK APPLICATIONS

REGISTERED COPYRIGHTS AND COPYRIGHT APPLICATIONS

EXCLUSIVE OUTBOUND MATERIAL INTELLECTUAL PROPERTY LICENSES

SCHEDULE 7

LETTER OF CREDIT RIGHTS

SCHEDULE 8

COMMERCIAL TORT CLAIMS

ANNEX 1 TO
GUARANTEE AND COLLATERAL AGREEMENT

FORM OF
ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT, dated as of [_____], is executed and delivered by [_____] (the "***Additional Grantor***"), in favor of SILICON VALLEY BANK, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***") for the banks and other financial institutions or entities (the "***Lenders***") from time to time parties to that certain Credit Agreement, dated as of May [__], 2021 (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the "***Credit Agreement***"), ACCURAY INCORPORATED, a Delaware corporation (the "***Borrower***"), the Lenders party thereto, and the Administrative Agent. All capitalized terms not defined herein shall have the respective meanings ascribed to such terms in such Credit Agreement.

W I T N E S S E T H:

WHEREAS, in connection with the Credit Agreement, the Borrower, and certain of its Affiliates (other than the Additional Grantor) have entered into that certain Guarantee and Collateral Agreement, dated as of May [__], 2021, in favor of the Administrative Agent for the benefit of the Secured Parties defined therein (the "***Guarantee and Collateral Agreement***");

WHEREAS, the Borrower is required, pursuant to Section 6.12 of the Credit Agreement to cause the Additional Grantor to become a party to the Guarantee and Collateral Agreement in order to grant in favor of the Administrative Agent (for the benefit of the Lenders) the Liens and security interests therein specified and provide its guarantee of the Obligations as therein contemplated; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee and Collateral Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, (a) hereby becomes a party to the Guarantee and Collateral Agreement as both a "Grantor" and a "Guarantor" thereunder with the same force and effect as if originally named therein as a Grantor and a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor and a Guarantor thereunder, and (b) hereby grants to the Administrative Agent, for the benefit of the Secured Parties, as security for the Secured Obligations, a security interest in all of the Additional Grantor's right, title and interest in any and to all Collateral of the Additional Grantor, in each case whether now owned or hereafter acquired or in which the Additional Grantor now has or hereafter acquires an interest and wherever the same may be located, but subject in all respects to the terms, conditions and exclusions set forth in the Guarantee and Collateral Agreement. The information set forth in Schedule 1 hereto is hereby added to the information set forth in the Schedules to the Guarantee

and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement (x) that is qualified by materiality is true and correct, and (y) that is not qualified by materiality, is true and correct in all material respects, in each case, on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date).

2. Governing Law. **THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.**

3. Loan Document. This Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]
By: _____
Name:
Title:

Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

Supplement to Schedule 4

Supplement to Schedule 5

Supplement to Schedule 6

Supplement to Schedule 7

Supplement to Schedule 8

ANNEX 2 TO
GUARANTEE AND COLLATERAL AGREEMENT

FORM OF
PLEDGE SUPPLEMENT

To: Silicon Valley Bank, as Administrative Agent

Re: ACCURAY INCORPORATED

Date: _____

Ladies and Gentlemen:

This Pledge Supplement (this "***Pledge Supplement***") is made and delivered pursuant to Section 3.3(g) of that certain Guarantee and Collateral Agreement, dated as of May [__], 2021 (as amended, modified, renewed or extended from time to time, the "***Guarantee and Collateral Agreement***"), among each Grantor party thereto (each a "***Grantor***" and collectively, the "***Grantors***"), and SILICON VALLEY BANK (the "***Administrative Agent***"). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Guarantee and Collateral Agreement or the Credit Agreement (as defined in the Guarantee and Collateral Agreement), as the context may require.

The undersigned, _____ *[insert name of Grantor]*, a _____ *[corporation, partnership, limited liability company, etc.]*, confirms and agrees that all Pledged Collateral of the undersigned, including the property described on the supplemental schedule attached hereto, shall be and become part of the Pledged Collateral and shall secure all Secured Obligations.

Schedule 2 to the Guarantee and Collateral Agreement is hereby amended by adding to such Schedule 2 the information set forth in the supplement attached hereto.

This Pledge Supplement shall constitute a Loan Document under the Credit Agreement.

THIS PLEDGE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has executed this Pledge Supplement, as of the date first above written.

[NAME OF APPLICABLE GRANTOR]

By: _____
Name: _____
Title: _____

SUPPLEMENT TO ANNEX 2
TO THE GUARANTEE AND COLLATERAL AGREEMENT

Name of Subsidiary	Number of Units/Shares Owned	Certificate(s) Numbers	Date Issued	Class or Type of Units or Shares	Percentage of Subsidiary's Total Equity Interests Owned

Exhibit 21.1

Subsidiaries of the Registrant

Name	State or Jurisdiction of Organization
Accuray International SARL	Switzerland
Accuray Europe SAS	France
Accuray UK, Ltd.	United Kingdom
Accuray Asia Ltd.	Hong Kong
Accuray Japan K.K.	Japan
Accuray Spain, S.L.U.	Spain
Accuray Medical Equipment (India) Private Limited	India
Accuray Medical Equipment (Rus) LLC.	Russia
Accuray Medical Equipment GmbH	Germany
Accuray Medical Equipment (Canada) Ltd.	Canada
Accuray Mexico, S.A. de C.V.	Mexico
Accuray Medical Equipment (Shanghai) Co., Ltd.	China
Accuray Medical Equipment (SG) Private Limited	Singapore
Accuray Brasil Comércio, Importação e Exportação de Equipamentos Médicos Ltda	Brazil
Accuray Belgium BV	Belgium
Accuray Italy S.R.L	Italy
Accuray Netherlands B.V.	Netherlands
Accuray Accelerator Technology (Chengdu) Company Limited	China
TomoTherapy Incorporated	United States
Morphormics, Inc.	United States

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated August 17, 2021, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Accuray Incorporated on Form 10-K for the year ended June 30, 2021. We consent to the incorporation by reference of said reports in the Registration Statements of Accuray Incorporated on Forms S-8 (File No. 333-255701, File No. 333-251038, File No. 333-236772, File No. 333-234412, File No. 333-228615, File No. 333-224547, File No. 333-220698, File No. 333-214833, File No. 333-213295, File No. 333-207865, File No. 333- 199997, File No. 333-174952, File No. 333-169139, File No. 333-166606, File No. 333-157120, File No. 333-141194, File No. 333-141195 and File No. 333-141197).

/s/ GRANT THORNTON LLP
San Jose, California
August 17, 2021

Exhibit 31.1

CERTIFICATION

I, Joshua H. Levine, certify that:

1. I have reviewed this annual report on Form 10-K 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 conclusion 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 registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 17, 2021

/s/ Joshua H. Levine

Joshua H. Levine
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Shig Hamamatsu, certify that:

1. I have reviewed this annual report on Form 10-K 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 conclusion 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 registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 17, 2021

/s/ Shig Hamamatsu

Shig Hamamatsu
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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 Annual Report on Form 10-K of the Company for the twelve months ended June 30, 2021 (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: August 17, 2021

/s/ Joshua H. Levine

Joshua H. Levine
Chief Executive Officer
(Principal Executive Officer)

/s/ Shig Hamamatsu

Shig Hamamatsu
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)