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As filed with the Securities and Exchange Commission on November 13, 2006

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ACCURAY INCORPORATED
(Exact name of registrant as specified in its charter)

California (before reincorporation) Delaware (after reincorporation) (State or other jurisdiction of incorporation or organization)	**3841 (Primary Standard Industrial Classification Code Number)**	**77-0268932 (I.R.S. Employer Identification Number)**

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Proposed Maximum Aggregate Offering**	**Amount of Registration Fee**

	Price(1)	
Common stock, $0.001 par value per share	$230,000,000	$24,610

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

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

The information contained in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Preliminary Prospectus

Subject to Completion, dated November 13, 2006

shares

Common Stock

This is the initial public offering of our common stock. We are offering shares of the common stock offered by this prospectus, and the selling stockholders are offering shares. We will not receive any proceeds from the sale of shares to be offered by the selling stockholders. We expect the initial public offering price to be between $ and $ per share.

Currently no public market currently exists for our common stock. We are applying to have our common stock listed on The NASDAQ Global Market under the symbol "ARAY."

This investment involves risk. See "Risk Factors" beginning on page 9.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per share	Total
Public Offering Price	$	$
Underwriting Discounts and Commissions	$	$
Proceeds, Before Expenses, to Accuray Incorporated	$	$
Proceeds, Before Expenses, to the Selling Stockholders	$	$

The underwriters have a 30-day option to purchase up to an additional shares of common stock from us and the selling stockholders to cover over-allotments, if any.

The underwriters are offering the common stock as set forth under "Underwriting." Delivery of the shares will be made on or about , 2007.

JPMorgan **UBS Investment Bank**

Piper Jaffray

Jefferies & Company

The date of this prospectus is , 2006

You should rely only on the information contained in this prospectus. Neither we, nor the underwriters, have authorized anyone to provide you with additional information or information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of shares of our common stock.

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CyberKnife®, our logo, Accuray™, AXUM®, Express™, Synchrony®, Xsight™, InView™, MultiPlan™, Xchange™ and RoboCouch™ are our trademarks. All other service marks, trademarks and trade names referred to in this prospectus are the property of their respective owners. Unless the context requires otherwise, the words "Accuray," "we," "Company," "us" and "our" refer to Accuray Incorporated. For purposes of this prospectus, the term "stockholder" shall refer to the holders of our common stock.

PROSPECTUS SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus and does not contain all the information you should consider before investing in our common stock. You should carefully read this prospectus in its entirety before investing in our common stock, including the section entitled "Risk Factors," and our consolidated financial statements and related notes and our consolidated pro forma financial statements and related notes included elsewhere in this prospectus.

Our Business

We have developed the first and only commercially available intelligent robotic radiosurgery system, the CyberKnife system, designed to treat solid tumors anywhere in the body as an alternative to traditional surgery. For over 30 years, traditional radiosurgery systems, or systems that deliver precise, high dose radiation directly to a tumor, have been used primarily to destroy brain tumors. Our CyberKnife system represents the next generation of radiosurgery systems, combining continuous image-guidance technology with a compact linear accelerator that has the flexibility to move in three dimensions according to the treatment plan. This combination, which we refer to as intelligent robotics, extends the benefits of radiosurgery to the treatment of tumors anywhere in the body. The CyberKnife system autonomously tracks, detects and corrects for tumor and patient movement in real-time during the procedure, enabling delivery of precise, high dose radiation typically with sub-millimeter accuracy. Traditional radiosurgery systems have limited mobility and generally require the use of rigid frames, restricting the ability to effectively treat tumors outside of the brain. The CyberKnife system does not have these limitations and therefore has increased flexibility to treat tumors throughout the body from many different directions, while minimizing the delivery of radiation to healthy tissue and vital organs. The CyberKnife procedure requires no anesthesia, can be performed on an outpatient basis and allows for the treatment of patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. In addition, the CyberKnife procedure avoids many of the potential risks and complications that are associated with other treatment options and is more cost effective than traditional surgery.

The CyberKnife system has received U.S. Food and Drug Administration, or FDA, 510(k) clearance to provide treatment planning and image-guided robotic radiosurgery for tumors anywhere in the body where radiation treatment is indicated. The CyberKnife system has also received a CE mark for sale in Europe and has been approved for various indications in Japan, Korea, Taiwan, China and other countries. We estimate that over 20,000 patients worldwide have been treated with the CyberKnife system since its commercial introduction. Our customers have increasingly used the CyberKnife system for indications outside of the brain, including for tumors on or near the spine and in the lung, liver, prostate and pancreas. Based on customer data, more than 50% of patients treated with the CyberKnife system in the United States during the three months ended September 30, 2006 were treated for tumors outside of the brain.

We market the CyberKnife system through a direct sales force in the United States and a combination of direct sales personnel and distributors in the rest of the world. As of September 30, 2006, we had 83 CyberKnife systems installed at customer sites and 78 pending installation. Of the 83 systems installed, 52 are in the United States. For the year ended June 30, 2006, our net revenue was $52.9 million, our net loss was $33.7 million and our net cash provided by operating activities was $25.5 million.

Cancer Market and Traditional Treatment

According to the World Health Organization, or WHO, an estimated 7.6 million people died of cancer in 2005, accounting for 13% of all deaths worldwide. The WHO estimates that there are 24.6 million people living with cancer worldwide, with approximately 10.9 million new cases being

diagnosed every year. Cancer is the second leading cause of death in the United States, after heart disease. The American Cancer Society, or ACS, estimates that approximately 1.4 million new cases of cancer will be diagnosed in the United States in 2006 and approximately 564,000 Americans will die as a result of cancer in the same period. The ACS broadly divides cancers 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 ACS estimates that solid tumor cancers will account for approximately 1.3 million, or 92%, of new cancer cases diagnosed in the United States in 2006.

Traditional methods for the treatment of solid tumor cancers include surgery, radiation therapy and chemotherapy. Surgery is especially appropriate for certain types of cancer, such as breast cancer, where tumors are often well-defined and surgically accessible. However, many types of solid tumors, including those affecting the brain, spine, lungs and various other organs, present significant challenges to traditional surgical approaches because they occur in hard-to-reach areas or lie within or in close proximity to critical organs. In addition, traditional surgery is highly invasive, painful and involves significant risks, including those associated with anesthesia, infection and other complications. Traditional surgery also entails significant costs and recovery times, and in some cases may not be an option due to a patient's physical condition or age.

Radiation therapy, as opposed to radiosurgery, is typically used to treat the area around a tumor site after surgery, though it can also be used to directly target the tumor in certain instances when surgery is not possible. The goal of radiation therapy is to eliminate all cancer cells in an intended treatment region. However, healthy tissue outside of the intended treatment region also receives radiation. Recent advances in radiation therapy have focused on improving the shape and targeting ability of the radiation beams to minimize unnecessary irradiation of healthy tissue. However, the majority of such radiation treatments are still delivered using gantry-based linear accelerator systems that have a limited range of motion, a limited ability to accurately target and conform to tumor shape and are unable to compensate for tumor and patient movement during treatment. Therefore, the treatment plans using these methods generally include not only the tumor, but also the surrounding healthy tissue to ensure that the entire tumor is treated.

Development of Radiosurgery

Radiosurgery systems differ from traditional radiation therapy systems in that they are designed to deliver a very high cumulative dose of radiation, in a single or small number of treatments, specifically targeted at the tumor rather than at a broader region surrounding the tumor area. One of the initial radiosurgery techniques was frame-based radiosurgery for the treatment of brain tumors. Although frame-based radiosurgery represents an advancement in cancer treatment, it has significant shortcomings. The necessity for a stereotactic frame to be screwed into a patient's skull makes the procedure more complicated and painful than traditional radiation therapy. In addition, because it is difficult to precisely reposition the head frame for multiple treatments, these systems are very rarely used when more than one dose of radiation is required.

Manufacturers have also developed frame-based radiosurgery systems to enable the treatment of tumors outside the brain, such as tumors on or near the spine and in the lung, liver, prostate and pancreas. However, frame-based approaches to delivering radiosurgery for tumors in such locations are rarely as accurate as frame-based systems used to treat brain tumors. This lack of accuracy may compromise the efficacy of traditional radiosurgery for tumors outside the brain and may increase the likelihood of delivering significant radiation doses to surrounding healthy tissue.

The CyberKnife System Solution

We have developed and commercialized the CyberKnife system, an intelligent robotic radiosurgery system designed to treat solid tumors throughout the body as an alternative to traditional surgery. The CyberKnife system uses intelligent robotics to precisely deliver high dose radiation to a tumor, typically with sub-millimeter accuracy. Our system tracks, detects and corrects for tumor and patient movement in real-time during treatment, limiting the potential damage to surrounding healthy tissue. Key benefits of the CyberKnife system include:

Treatment of inoperable or surgically complex tumors. The CyberKnife system can be used to treat tumors that cannot be 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.

Treatment of tumors throughout the body. The CyberKnife system has been cleared by the FDA to provide treatment planning and image-guided radiosurgery for tumors anywhere in the body where radiation treatment is indicated.

Real-time tracking of tumor movement. The CyberKnife system is able to treat tumors that may change position due to tumor and patient movement during treatment with a level of accuracy associated with radiosurgery procedures for brain tumors.

Significant patient benefits. Patients may be treated with the CyberKnife system on an outpatient basis, without anesthesia, and without the risks and complications inherent in traditional surgery. In addition, patients do not require a stereotactic frame or other substantial pre-treatment preparation, and typically there is no recovery time or hospital stay associated with the CyberKnife procedure.

Facilitates additional revenue generation through increased patient volumes. We believe that the CyberKnife system allows our customers to effectively treat patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. Therefore, we believe the treatment of these patients provides additional revenue for our customers. In addition, because the CyberKnife procedure is a non-invasive, outpatient procedure requiring little or no recovery time, hospitals can treat more patients than through traditional surgery.

Upgradeable modular design. Our CyberKnife system has a modular design which facilitates the implementation of upgrades without requiring our customers to purchase an entirely new system. We have a well-established track record of developing and delivering state-of-the-art upgrades to our customers, enabling our customers to take advantage of the continued evolution of our CyberKnife system. We continue to develop and offer new clinical capabilities enhancing ease of use, reducing treatment times, improving accuracy and improving patient access.

Key components and technologies of our CyberKnife system include:

Compact X-band linear accelerator. Our proprietary compact X-band linear accelerator, the component that generates the radiation that destroys the tumor, is smaller and weighs significantly less than standard medical linear accelerators typically used in radiation therapy.

Robotic manipulator. The manipulator arm, with six-degrees-of-freedom range of movement, is designed to move and direct the linear accelerator with an extremely high level of precision and repeatability and allows doses of radiation to be delivered from nearly any direction.

Real-time image-guidance system with continuous target tracking and feedback. Real-time image-guided robotics enables the CyberKnife system to continuously detect and correct for tumor and patient movement throughout the entire treatment without the need for clinician intervention.

Synchrony respiratory tracking system. The CyberKnife system employs a proprietary motion tracking system called Synchrony to target tumors that move with patient respiration, allowing clinicians to significantly reduce treatment margins while eliminating the need for gating or breath-holding techniques.

Xsight Spine Tracking System. The Xsight Spine Tracking System eliminates the need for invasive surgical implantation of small, inert metal markers, known as fiducials, when treating tumors on or near the spine, by using skeletal structures to automatically locate and track tumors during treatment.

RoboCouch patient positioning system. The RoboCouch robotically aligns patients prior to treatments, reducing patient set up times and enabling faster treatments.

Xsight Lung Tracking System. The Xsight Lung Tracking System directly tracks the anatomy of some lung tumors without the need for implanted fiducials and is integrated with the Synchrony respiratory tracking system.

Xchange robotic collimator changer. The Xchange robotic collimator changer automatically exchanges secondary collimators, which determine the radiation beam size, during treatment. The use of multiple collimators can enable faster treatments than the use of a single collimator.

In-Room CT System. The In-Room CT System enables diagnostic quality 3D and 4D patient imaging just prior to treatment. Combined with the RoboCouch Patient Positioning System, the In-Room CT System provides a smooth and efficient scan-to-treatment transition without having to enter the treatment room or move the patient.

4D Treatment Optimization and Planning System. Our 4D Treatment Optimization and Planning System optimizes treatment by taking into account the movement of the tumor as well as the movement and deformation of the surrounding tissue, thereby minimizing treatment margins and radiation exposure to healthy tissue.

Other features. The CyberKnife system also includes proprietary treatment planning software and remote review capabilities.

Shared Ownership Programs, Product Services and Upgrades

We provide a variety of services to support the successful operation and use of our CyberKnife systems. We expect that these services will enable us to generate a recurring revenue stream that will continue to comprise an important portion of our revenue. We offer shared ownership programs under which we provide a CyberKnife system to a customer while retaining ownership of that system. Under this program we generally receive the greater of a minimum monthly payment or a portion of the revenue generated from the use of that system. As of September 30, 2006, we had entered into 22 shared ownership programs, of which 10 are installed and 12 are pending installation.

We also offer several multiyear service plans for an annual fee. Currently, our most comprehensive service plan is the Diamond Elite multiyear service plan, which provides for annual renewal for four years, including the one-year warranty period. The multiyear service plan is typically signed by the customer at the same time as the CyberKnife system purchase contract. In addition to providing technical support, this service plan provides our customers the opportunity to acquire up to two unspecified future upgrades per year, when and if they become available. As of September 30, 2006, 59 of our customers had purchased service plans.

Our Strategy

Our goal is to have the CyberKnife system become the standard of care for the treatment of solid tumors anywhere in the body as an alternative to traditional surgery. We believe our technology can

significantly enhance the applications of radiosurgery by increasing the number and type of tumors that can be treated effectively. The key elements of our strategy include:

- increase physician adoption and patient awareness to drive utilization;
- continue to expand the radiosurgery market;
- continue to innovate through clinical development and collaboration;
- leverage our installed base to generate additional recurring revenue;
- continue to expand international sales and geographic reach; and
- pursue acquisitions, strategic partnerships and joint ventures.

Corporate Information

We were incorporated in California in 1990 and commenced operations in 1992. We plan to reincorporate in Delaware prior to the closing of this offering. Our principal offices are located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, and our telephone number is (408) 716-4600. We maintain a website at http://www.accuray.com. The information contained on our website is not incorporated into and does not constitute a part of this prospectus, and the only information that you should rely on in making your decision whether to invest in our common stock is the information contained in this prospectus.

The Offering

Common stock offered by Accuray	shares
Common stock offered by the selling stockholders	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We expect to use the net proceeds of this offering for sales and marketing initiatives, research and development activities, increased working capital and general corporate purposes. In addition, we may use a portion of the proceeds to acquire complementary technologies, products or businesses.
Proposed NASDAQ Global Market symbol	ARAY

The number of shares of common stock to be outstanding after this offering is based on 41,954,435 shares outstanding as of June 30, 2006 and excludes:

- 10,900,285 shares of common stock issuable upon the exercise of outstanding options, at a weighted average exercise price of approximately $2.07 per share;
- 2,156,232 shares of common stock reserved for issuance under our 1998 Equity Incentive Plan; and
- shares to be available for issuance under our 2007 Equity Incentive Plan and our Employee Stock Purchase Plan.

Except as otherwise indicated, information in this prospectus reflects or assumes the following:

- the conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock immediately prior to the closing of this offering;
- the exercise of a warrant to purchase 525,000 shares of common stock at an exercise price of $1.00 per share immediately prior to the closing of this offering;
- no exercise by the underwriters of their over-allotment option; and
- our reincorporation from California to Delaware and the filing of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws upon the closing of this offering.

Summary Consolidated Financial Data

The following table presents summary consolidated financial data. We derived the summary consolidated statements of operations data for the years ended June 30, 2004, 2005 and 2006 and the summary consolidated balance sheet as of June 30, 2006 from our audited consolidated financial statements and notes thereto that are included elsewhere in this prospectus. Our historic results are not necessarily indicative of the results that may be expected in the future. You should read this data together with our consolidated financial statements and related notes included elsewhere in this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this prospectus.

	Years ended June 30,		
	2004	2005	2006
	(in thousands, except per share data)		
Consolidated Statements of Operations Data:			
Total net revenue	$ 19,569	$ 22,377	$ 52,897
Total cost of revenue[(1)]	8,496	11,115	27,492
Gross profit	11,073	11,262	25,405
Operating expenses:			
Selling and marketing[(1)]	10,647	16,361	25,186
Research and development[(1)]	7,311	11,655	17,788
General and administrative[(1)]	4,672	8,129	15,923
Total operating expenses	22,630	36,145	58,897
Loss from operations	(11,557)	(24,883)	(33,492)
Interest and other income (expense), net	(136)	(238)	56
Loss before provision for income taxes	(11,693)	(25,121)	(33,436)
Provision for income taxes	3	68	258
Net loss	$ (11,696)	$ (25,189)	$ (33,694)
Net loss per common share:			
Basic and diluted	$ (1.00)	$ (1.76)	$ (2.11)
Weighted average common shares outstanding used in computing net loss per common share:			
Basic and diluted	11,737	14,283	15,997
Pro forma net loss per share, basic and diluted (unaudited)[(2)]			$ (0.81)
Pro forma weighted average common shares outstanding, basic and diluted (unaudited)[(2)]			41,709

(1) Includes stock-based compensation expense as follows:

	Years ended June 30,		
	2004	2005	2006
	(in thousands)		
Total cost of revenue	$ 190	$ 454	$ 863
Selling and marketing	826	1,903	2,569
Research and development	648	1,157	1,574
General and administrative	785	2,812	3,237

(2) See note 2 to our consolidated financial statements for a description of the method used in calculating our pro forma net loss per share (unaudited), basic and diluted and pro forma weighted average common shares outstanding, basic and diluted (unaudited).

	Years ended June 30,		
	2004	2005	2006
Selected Operating Data:			
Number of CyberKnife systems installed per year			
United States	7	14	22
International	9	10	6
Total	16	24	28
Net cash provided by operating activities (in thousands)	$ 4,906	$ 18,015	$ 25,505

	As of June 30, 2006		
	Actual	Pro forma[1]	Pro forma as adjusted[2]
		(unaudited)	(unaudited)
		(in thousands)	
Consolidated Balance Sheet Data:			
Cash and cash equivalents	$ 27,856	$ 28,381	
Deferred cost of revenue	56,588	56,588	
Total assets	138,623	139,148	
Short-term debt	—	—	
Deferred revenue	149,664	149,664	
Working capital (deficit)	(3,783)	(3,258)	
Redeemable convertible preferred stock	27,504	—	
Total stockholders' equity (deficiency)	(80,855)	(52,826)	

(1) The pro forma balance sheet data presented above gives effect to (i) the conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock immediately prior to the closing of this offering and (ii) the exercise of a warrant to purchase 525,000 shares of common stock immediately prior to the closing of this offering.

(2) The pro forma as adjusted balance sheet data reflects (i) the conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock immediately prior to the closing of this offering, (ii) the exercise of a warrant to purchase 525,000 shares of common stock immediately prior to the closing of this offering and (iii) the sale of the shares of common stock in this offering at an assumed initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses.

RISK FACTORS

An investment in our common stock involves significant risks. You should carefully consider the risks described below and the other information in this prospectus, including our consolidated financial statements and related notes, before you decide to invest in our common stock. If any of the following risks actually occur, our business, prospects, financial condition and results of operations could be materially harmed, the trading price of our common stock could decline and you could lose all or part of your investment. The risks and uncertainties described below are those that we currently believe may materially affect us. Additional risks and uncertainties that we are unaware of or that we currently deem immaterial may also become important factors that affect us.

Risks Related to Our Business

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

We have incurred net losses in every fiscal period since our inception. As of June 30, 2006, we had an accumulated deficit of $120.6 million. We expect to continue to incur net losses in the future, particularly as we increase our manufacturing, sales and marketing, and administrative activities and as we continue our research and development activities. Our ability to achieve and maintain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife system and to control our costs and effectively manage our growth. We are required to defer revenue associated with our legacy multiyear service plans due to specified obligations related to the delivery of upgrades to the CyberKnife system. Therefore, our deferred revenue will be higher in the short term and we may not be able to recognize some portions of our deferred revenue until we have satisfied all obligations for delivery of upgrades. We cannot assure you that we will be able to achieve or maintain profitability. In the event we fail to achieve and maintain profitability, our stock price could decline.

If the CyberKnife system does 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 system as a preferred method of tumor treatment will be crucial to our continued success. Physicians will not begin to use or increase the use of the CyberKnife system unless they determine, based on experience, clinical data and other factors, that the CyberKnife system is a safe and effective alternative to current treatment methods. The CyberKnife system was initially used primarily for the treatment of tumors in the brain, and the broader use of the system to treat tumors elsewhere in the body has been a more recent development. As a result, physician and patient acceptance of the CyberKnife system as a broad-based tool for treatment of solid tumor cancers anywhere in the body has not yet been fully demonstrated, particularly as compared to products, systems or technologies that have longer histories in the marketplace. The CyberKnife system is a major capital purchase and purchase decisions are greatly influenced by hospital administrators who are subject to increasing pressures to reduce costs. These and other factors may affect the rate and level of the CyberKnife system's market acceptance, including:

- the CyberKnife system's price relative to other products or competing treatments;
- effectiveness of our sales and marketing efforts;
- capital equipment budgets of healthcare institutions;
- perception by physicians and other members of the healthcare community of the CyberKnife system's safety, efficacy and benefits compared to competing technologies or treatments;
- publication in peer-reviewed medical journals of data regarding the successful use and longer term clinical benefits of the CyberKnife system;

- willingness of physicians to adopt new techniques and the ability of physicians to acquire the skills necessary to operate the CyberKnife system;
- extent of third-party coverage and reimbursement for procedures using the CyberKnife system;
- development of new products and technologies by our competitors or new treatment alternatives;
- regulatory developments related to manufacturing, marketing and selling the CyberKnife system both within and outside the United States;
- perceived liability risks arising from the use of new products; and
- unfavorable publicity concerning the CyberKnife system or radiation-based treatment alternatives.

If the CyberKnife system is unable to achieve or maintain market acceptance, our business would be harmed and our stock price would decline.

The high unit price of the CyberKnife system, as well as other factors may contribute to substantial fluctuations in our operating results and stock price.

Because of the high unit price of the CyberKnife system, and the relatively small number of units installed each quarter, each installation of a CyberKnife system can represent a significant component of our revenue for a particular quarter. Therefore, if we do not install a CyberKnife system when anticipated, our operating results may vary significantly and our stock price may be materially harmed. These fluctuations and other potential fluctuations mean that you should not rely upon our operating results in any particular period as an indication of future performance. In particular, factors which may contribute to these fluctuations may include:

- timing of when we are able to recognize revenue associated with sales of the CyberKnife system, which varies depending upon the terms of the applicable sales and service contracts;
- timing and level of expenditures associated with new product development activities;
- regulatory requirements in some states for a certificate of need prior to the installation of a radiation device;
- delays in shipment due, for example, to unanticipated construction delays at customer locations where our products are to be installed, cancellations by customers, natural disasters or labor disturbances;
- delays in our manufacturing processes or unexpected manufacturing difficulties;
- timing of the announcement, introduction and delivery of new products or product upgrades by us and by our competitors;
- timing and level of expenditures associated with expansion of sales and marketing activities such as trade shows and our overall operations;
- disruptions in the supply or changes in the costs of raw materials, labor, product components or transportation services; and
- changes in third party coverage and reimbursement, changes in government regulation, or a change in a customer's financial condition or ability to obtain financing.

These factors are difficult to forecast and may contribute to substantial fluctuations in our quarterly revenues and substantial variation from our projections, particularly during the periods in which our sales volume is low. Any failure to meet investor expectations regarding our operating results may cause our stock price to decline.

We experience a long and variable sales and installation cycle, which may result in inconsistent quarterly results.

The CyberKnife system has a lengthy sales and purchase order cycle because it is a major capital equipment item and requires the approval of senior management at purchasing institutions. The sales process in the United States often begins with a letter of intent between us and the customer. After the letter of intent is signed, we enter into a definitive purchase contract with the customer. Generally following the execution of the contract, the customer begins the building or renovation of a facility to house the CyberKnife system, which together with the subsequent installation of the CyberKnife system, can take approximately 12 months or longer to complete. During this period, the customer must build a radiation-shielded facility to house their CyberKnife system. In order to construct this facility, the customer must typically obtain radiation device installation permits, which are granted by state and local government bodies, each of which may have different criteria for permit issuance. If a permit were denied for installation at a specific hospital or treatment center, our CyberKnife system could not be installed at that location.

Under our revenue recognition policy, we generally do not recognize revenue attributable to a CyberKnife system purchase until after installation has occurred. For international sales through distributors, we typically recognize revenue when the system is delivered to the end user's site. Therefore the long sales cycle together with the timing of CyberKnife system shipments and installations may result in significant fluctuations in our reporting of quarterly revenues. Under our current forms of purchase and service contracts, we receive a majority of the purchase price for the CyberKnife system upon installation of the system. Events beyond our control may delay installation and the satisfaction of contingencies required to receive cash inflows and recognize revenue, such as:

- procurement delay;
- customer funding or financing delay;
- organizational delay caused by customer personnel;
- construction delay;
- delay pending customer receipt of a building or radiation device installation permit; and
- delay caused by weather or natural disaster.

In the event that a customer does not, for any of the reasons above or other reasons, proceed with installation of the system after entering into a purchase contract, we would only recognize the deposit portion of the purchase price as revenue. Therefore, delays in the installation of CyberKnife systems or customer cancellations would adversely affect our cash flows and revenue, which would harm our results of operations and could cause our stock price to decline.

If third-party payors do not continue to provide sufficient coverage and reimbursement to healthcare providers for use of the CyberKnife system, our revenue would be adversely affected.

Our ability to commercialize our products successfully will depend in significant part on the extent to which appropriate coverage and reimbursement for our products and related procedures are obtained from third-party payors, including governmental payors such as Medicare. Third-party payors, and in particular managed care organizations, are increasingly challenging the prices charged for medical products and services and instituting cost containment measures to control or significantly influence the purchase of medical products and services. These cost containment measures, if instituted in a manner affecting the coverage for or payment of our products, could have a material adverse effect on our operating results.

Uncertainty exists as to the coverage and reimbursement status of new medical products and services and new indications for existing products. The CyberKnife procedure is currently covered and

reimbursed by Medicare and other governmental and non-governmental third-party payors. However, we cannot assure you that the CyberKnife procedure will continue to be reimbursed at current rates or that third-party payors will continue to consider our products cost-effective relative to other treatments and provide coverage and reimbursement for our products, in whole or in part. For 2007, the Centers for Medicare and Medicaid Services, or CMS, has issued a final rule that will result in a downward adjustment to the reimbursement rates for treatments using our technology in the hospital outpatient department. For example, for the calendar years 2004 to 2006, the Medicare billing codes for treatments using the CyberKnife system in the hospital outpatient department were assigned a national payment rate of $5,250 for the first treatment and $3,750 for each treatment thereafter, up to a maximum of five treatments. For the 2007 calendar year, under the finalized Medicare payment rules, the national payment rate for procedures billed using these codes will be $3,896 and $2,645, respectively.

In addition, new billing codes for stereotactic radiosurgery have been established by the American Medical Association, effective 2007. The CMS has determined that the new codes would not be used for hospital outpatient claims under the prospective payment system for 2007 and, instead, existing billing codes for our technology would continue to be in effect. It remains unclear how the billing codes will be used for procedures in other settings for Medicare purposes or how they will be used by non-Medicare payors. Payment amounts for 2007 under the Medicare physician fee schedule for freestanding settings may result in a decrease from current payment amounts if these codes are required for billing our technology. Physicians, hospitals and other healthcare providers may be reluctant to purchase the CyberKnife system or may decline to do so entirely if they determine there is not sufficient coverage and reimbursement from third-party payors for the cost of the CyberKnife procedure. In addition, if physicians or hospital administrators believe that our CyberKnife system will add costs to a procedure, but will not add sufficient offsetting economic or clinical benefits, adoption could be impaired. Any reduction or limitation in use of the CyberKnife system could have an adverse impact on our sales.

Our success in international markets also depends upon the eligibility of reimbursement for the CyberKnife procedure through government-sponsored healthcare payment systems and third-party payors. Reimbursement and healthcare payment systems in international markets vary significantly by country and, within some countries, by region. In many international markets, payment systems may control reimbursement for procedures performed using new products as well as procurement of these products. In addition, as economies of emerging markets develop, these countries may implement changes in their healthcare delivery and payment systems. Furthermore, healthcare cost containment efforts similar to those underway in the United States are prevalent in many of the other countries in which we intend to sell our products and these efforts are expected to continue. Market acceptance of our products in a particular country may depend on the availability and level of reimbursement in that country. In the event that our customers are unable to obtain adequate reimbursement for the CyberKnife procedures in international markets in which we are selling, or are seeking to sell, CyberKnife systems, market acceptance of our products would be adversely affected.

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

Even if third-party payors provide adequate coverage and reimbursement for the CyberKnife procedure, adverse changes in third-party payors' general policies toward reimbursement could preclude market acceptance for our products and materially harm our sales and revenue growth, which could cause our stock price to decline. In the United States, there have been, and we expect there will continue to be, a number of legislative and regulatory changes and proposals to change the healthcare system, and some could involve changes that significantly affect our business. For instance, on December 8, 2003, President George W. Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act of 2003, which, among other things, established a new prescription drug benefit and changed reimbursement methodologies for drugs and devices used in

hospital outpatient departments and in the home. In addition, certain federal regulatory changes occur at least annually. The CMS has determined that, beginning in 2007, treatments in hospital outpatient departments using our technology will no longer be assigned a new technology classification and, instead, will be transitioned to a classification that would result in a reduction in Medicare payments to hospitals. Further, new billing codes that go into effect in 2007 may be required by third-party payors and may result in a decrease in payments for services using our technology. A downward adjustment in reimbursement could have a material adverse effect on our operations.

Future legislative or policy initiatives directed at reducing costs could be introduced at either the federal or state level. We cannot predict the impact on our business of any legislation or regulations related to the healthcare system that may be enacted or adopted in the future.

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

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

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

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

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

- Discount and free good arrangements that are not properly disclosed or accurately reported to federal health care 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 reimbursement guarantee) that confers a benefit to the purchaser;

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

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

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

We have various arrangements with physicians, hospitals and other entities which implicate these laws. For example, physicians own our stock who also provide medical advisory and other consulting and personal services. Similarly, we have a variety of different types of arrangements with our customers. For example, our placement and shared ownership programs entail the provision of our CyberKnife system to our customers under a deferred payment program, where we generally receive

the greater of a fixed minimum payment or a portion of the revenues of services. Included in the fee we charge for the placement and shared ownership programs are a variety of services, including physician training, educational and marketing support, general reimbursement guidance and technical support, and, in the case of the placement program, certain services and upgrades are provided without additional charge based on procedure volume. In the past, we have also provided loans to our customers. We also provide research grants to customers to support customer studies related to, among other things, our CyberKnife systems. Certain of these arrangements do not meet Anti-Kickback Statute safe harbor protections, which may result in increased scrutiny by government authorities having responsibility for enforcing these laws.

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

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

The CyberKnife system is a medical device that is subject to extensive regulation in the United States by local, state and the federal government, including by the FDA. The FDA regulates virtually all aspects of a medical device's design, development, testing manufacturing, labeling, storage, record keeping, reporting, sale, promotion, distribution and shipping. Before a new medical device, or a new use of or claim for an existing product, can be marketed in the United States, it must first receive either premarket approval or 510(k) clearance from the FDA, unless an exemption exists. Either process can be expensive and lengthy. The FDA's 510(k) clearance process usually takes from three to twelve months, but it can last longer. The process of obtaining premarket approval is much more costly and uncertain than the 510(k) clearance process and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA. Despite the time, effort and cost, there can be no assurance that a particular device will be approved or cleared by the FDA through either the premarket approval process or 510(k) clearance process.

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

a death or serious injury. 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 system. Upgrades previously released by us required 510(k) clearance before we were able to offer them for sale. We expect our future upgrades will similarly require 510(k) clearance; however, future upgrades may be subject to the substantially more time consuming and uncertain premarket approval process.

The FDA requires device manufacturers to make a 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 510(k) clearances for modifications.

We have obtained 510(k) clearances for the CyberKnife system for the treatment of tumors anywhere in the body where radiation is indicated. We have made modifications to the CyberKnife system 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 and requires us to obtain additional premarket approvals or 510(k) clearances for any modifications to the CyberKnife system and we fail to obtain such approvals or clearances or fail to secure approvals or clearances in a timely manner, we may be required to cease manufacturing and marketing the modified device or to recall such modified device until we obtain FDA approval or clearance and we may be subject to significant regulatory fines or penalties.

In addition, even if the CyberKnife system is not modified, the FDA and similar governmental authorities in other countries in which we market and sell our products have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. 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, harm our reputation with customers, negatively affect our future sales and business, require redesign of the CyberKnife system, harm our operating results, and result in a decline in our stock price. 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.

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

We currently depend on single source suppliers for some of the critical components necessary for the assembly of the CyberKnife system, including the robotic manipulator, imaging plates, robotic couch and magnetron. If any single source suppliers were to cease delivering components to us or fail to provide the components on a timely basis, we might be required to qualify an alternate supplier and we would likely experience a lengthy delay in our manufacturing processes, 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. Furthermore, if we are required to change the manufacturer of a critical component of the CyberKnife system, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality requirements. We also will be required to assess the new manufacturer's compliance with all applicable regulations and guidelines, which could further impede our ability to manufacture our products in a timely manner. If the change in manufacturer results in a significant change to the

product, a new 510(k) clearance would be necessary, which would likely cause substantial delays. The disruption or termination of the supply of key components for the CyberKnife system could harm our ability to generate revenue, lead to customer dissatisfaction and damage our reputation and cause the price of our common stock to decline.

Our accountants have identified and reported to us material weaknesses for the years ended June 30, 2004, 2005 and 2006, relating to our internal controls over financial reporting. If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and our stock price.

In connection with the audit of our consolidated financial statements for the years ended June 30, 2004, 2005 and 2006, our independent registered public accounting firm identified material weaknesses and significant deficiencies in our internal controls over financial reporting. These weaknesses and deficiencies relate to a lack of segregation of duties and the misapplication of accounting policies, including policies related to revenue recognition and stock-based compensation.

Our independent registered public accounting firm was not, however, engaged to audit, nor has it audited, the effectiveness of our internal controls over financial reporting. Accordingly, our independent registered public accounting firm has not rendered an opinion on our internal controls over financial reporting. Likewise, we have not performed an evaluation of internal controls over financial reporting, as we are not currently required to comply with Section 404 of the Sarbanes-Oxley Act of 2002. If such an evaluation had been performed or when we are required to perform such an evaluation, additional material weaknesses, significant deficiencies and other control deficiencies may have been or may be identified. Ensuring that we have adequate internal financial and accounting controls and procedures in place to help ensure that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be evaluated frequently.

Even after any corrective actions are implemented, the effectiveness of our controls and procedures may be limited by a variety of risks including:

- faulty judgment, omissions or mistakes;
- circumvention of our internal controls and procedures;
- inappropriate management override of internal controls and procedures; and
- risk that enhanced internal controls and procedures may still not be adequate to assure timely and reliable financial information, processing and reporting.

Although we have taken measures to remediate the material weaknesses as well as the other significant deficiencies and control deficiencies, we cannot assure you that we have identified all, or that we will not in the future have additional material weaknesses, significant deficiencies and control deficiencies. Our independent registered public accounting firm has not evaluated any of the measures we have taken, or that we propose to take, to address the material weaknesses and the significant deficiencies and control deficiencies discussed above. Any failure to maintain or implement required new or improved controls, or any difficulties we encounter in implementation, could cause us to fail to meet our periodic reporting obligations or result in material misstatements in our consolidated financial statements. Any such failure could also adversely affect management's assessment of our disclosure controls and procedures, required with the filing of our quarterly and annual reports after our initial public offering, and the results of periodic management evaluations and annual auditor attestation reports regarding the effectiveness of our internal controls over financial reporting that will be required when the Securities and Exchange Commission's, or SEC's, rules under Section 404 of the Sarbanes-Oxley Act of 2002 become applicable to us beginning with our Annual Report on Form 10-K for the year ending June 30, 2008.

The existence of a material weakness could result in errors in our consolidated financial statements that could result in a restatement of our consolidated financial statements, cause us to fail to meet our reporting obligations and cause investors to lose confidence in our reported financial information, leading to a decline in our stock price.

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 system. If we are unable to anticipate or keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our products may become less useful or obsolete and our operating results will suffer.

The medical device industry in general and the non-invasive cancer treatment field in particular are subject to intense and increasing competition and rapidly evolving technologies. Because our products often have long development and government approval cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to continue to demonstrate the advantages of our products and technologies over well-established alternative procedures, products and technologies, and convince physicians and other healthcare decision makers of the advantages of our products and technologies. Traditional surgery and other forms of minimally invasive procedures, chemotherapy or other drugs remain alternatives to the CyberKnife system. Also, we compete directly with traditional radiosurgery systems primarily from Elekta AB (publ), or Elekta, BrainLAB AG, the Integra Radionics business of Integra LifeSciences Holdings Corporation, or Radionics, and Varian Medical Systems, Inc., or Varian.

The market for standard linear accelerators, or linacs, is dominated by three companies: Elekta, Siemens AG and Varian. In addition, TomoTherapy Incorporated recently introduced a radiation therapy product. The CyberKnife system is not typically used to perform traditional radiation therapy and therefore does not usually compete directly with standard medical linacs that perform standard radiation therapy. However, some manufacturers of standard linac based radiation therapy systems, including Varian and Elekta, have products that can be used in combination with body and/or head frames and image-guidance systems to perform radiosurgery. In addition, many government, academic and business entities are investing substantial resources in research and development of cancer treatments, including surgical approaches, radiation treatment, drug treatment, 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 system and its 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 assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on:

- widespread awareness, acceptance and adoption by the radiation oncology and cancer therapy markets of our products;
- the discovery of new technologies that improve the effectiveness and productivity of the CyberKnife system radiosurgery process;
- product coverage and reimbursement from third-party payors, insurance companies and others;

- properly identifying customer needs and delivering new products or product enhancements to address those needs;
- published studies supporting the efficacy and safety and long-term clinical benefit of the CyberKnife system;
- limiting the time required from proof of feasibility to routine production;
- limiting the timing and cost of regulatory approvals;
- our ability to attract and retain qualified personnel;
- the extent of our patent protection or our ability to otherwise develop proprietary products and processes;
- securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts; and
- obtaining any necessary United States or foreign marketing approvals or clearances.

If the CyberKnife system is not competitive based on these or other factors, our business would be harmed.

We must obtain and maintain regulatory approvals in international markets in which we sell, or seek to sell, our products.

In order for us to market and sell the CyberKnife system internationally, either through direct sales personnel or through distributors, we must obtain and maintain regulatory clearances applicable to the countries and regions in which we are selling, or are seeking to sell, our products. These regulatory approvals and clearances, and the process required to obtain and maintain them, vary substantially among international jurisdictions. In some jurisdictions, we rely on our distributors to manage the regulatory process and we are dependent on their ability to do so effectively. For example, in Japan, our clearances are currently limited to use of the CyberKnife system in the head and neck. In addition, our regulatory approval in Japan was suspended for a period of twelve months during 2003 as a result of a failure of our distributor to coordinate product modifications and obtain necessary regulatory clearances in a timely manner. In the event that we are unable to obtain and maintain regulatory clearances for the CyberKnife system, including new clearances for system upgrades and use of the system anywhere in the body, in international markets we have entered or desire to enter, our international sales could fail to grow or decline. These events would harm our business and could cause our stock price to decline.

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.

In addition to patents, we rely on a combination of trade secrets, copyright and trademark laws, nondisclosure agreements and other contractual provisions and technical security measures to protect our intellectual property rights. These measures may not be adequate to safeguard the technology underlying our products. If they do not protect our rights adequately, third parties could use our technology, and our ability to compete in the market would be reduced. Although we have attempted to obtain patent coverage for our technology where available and appropriate, there are aspects of the technology for which patent coverage was never sought or never received. There are also countries in which we sell or intend to sell the CyberKnife system but have no patents or pending patent

applications. Our ability to prevent others from making or selling duplicate or similar technologies will be impaired in those countries in which we have no patent protection. Although we have several issued patents in the United States and in foreign countries protecting aspects of the CyberKnife system, our pending United States and foreign patent applications may not issue, may issue only with limited coverage or may issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, our issued patents and those of our licensors may not provide us with any competitive advantages. Competitors may be able to design around our patents or develop products which provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges by third parties, and others may challenge the inventorship or ownership of our patents and pending patent applications. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property rights or to defend our patents against challenge could be expensive and time consuming and could divert our management's attention. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge.

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

In October 2006, we received a letter from American Science and Engineering, Inc., or AS&E, expressing concerns that we may be using certain intellectual property we acquired from AS&E in a manner that breaches, or may breach, our contractual obligations under a license agreement with them in certain nonmedical fields. While we do not believe our activities breach or violate the terms of the license agreement, we cannot assure you that AS&E will not commence litigation on the grounds that we are in breach of our obligations under the license agreement.

The policies we use 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.

Because the medical device industry is characterized by competing intellectual property, we may be sued for violating the intellectual property rights of others.

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. A number of companies in our market, as well as universities and research institutions, have issued patents and have filed patent applications which relate to the use of stereotactic radiosurgery to treat solid cancerous and benign tumors.

Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. We have not conducted an extensive search of patents issued to third parties, and no assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been

filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields, our competitors or other third parties may assert that our products and the methods we employ in the use of our products are covered by United States or foreign patents held by them. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware, and which may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our products or parts may infringe and of which we are unaware. As the number of competitors in the market for less invasive cancer treatment alternatives grows, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. 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 the funds necessary to continue our operations.

In the event that we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property were upheld as valid and enforceable and we were found to infringe or violate the terms of a license to which we are a party, we could be prevented from selling our products unless we could obtain a license or were able to redesign the product to avoid infringement. If we were unable to obtain a license or successfully redesign our system, we might be prevented from selling our system. If there is an allegation or determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, or a settlement or ongoing royalties. In these circumstances, we may be unable to sell our products at competitive prices or at all, our business and operating results could be harmed and our stock price may decline.

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

Our business exposes us to potential liability risks that are inherent in the manufacturing, marketing and sale of medical device products. We may be held liable if the CyberKnife system causes injury or death or is found otherwise unsuitable during usage. Our products incorporate sophisticated components and computer software. Complex software can contain errors, particularly when first introduced. In addition, new products or enhancements may contain undetected errors or performance problems that, despite testing, are discovered only after installation. Because our products are designed to be used to perform complex surgical procedures, defects could result in a number of complications, some of which could be serious and could harm or kill patients. 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. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. The coverage limits of our insurance policies may not be adequate to cover future claims. If sales of our products increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or other field actions or excessive warranty claims, whether arising from defects in design or manufacture or otherwise, could negatively affect our sales or require a change in the design, manufacturing process or the indications for which the CyberKnife system may be used, any of which could harm our reputation and business, result in a decline in revenue and cause our stock price to fall.

In addition, if a product we designed or manufactured is defective, whether due to design or manufacturing 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. In 2002, we were subject to a product recall in Japan, as a result of a failure of our prior distributor to coordinate product modifications and obtain necessary regulatory approvals in a timely manner. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities of our products, which could in turn result in required recalls, restrictions on the sale of the products or other civil or criminal penalties. The adverse publicity resulting from any of these actions could cause customers to review and potentially terminate their relationships with us. These investigations or recalls, especially if accompanied by unfavorable publicity or termination of customer contracts, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

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

Although we believe that the CyberKnife system has advantages over competing products and technologies, we do not have sufficient clinical data demonstrating these advantages for all tumor indications. For example, because our CyberKnife procedures are relatively new, we have limited clinical data relating to the effectiveness of the CyberKnife system as a means of local control. In addition, we have only limited five-year patient survival rate data, which is a common long-term measure of clinical effectiveness in cancer treatment. Further, future patient studies or clinical experience may indicate that treatment with the CyberKnife system does not improve patient outcomes. Such results could slow the adoption of our products by physicians, significantly reduce our ability to achieve expected revenues and could prevent us from becoming profitable. In addition, if future results and experience indicate that our products cause unexpected or serious complications or other unforeseen negative effects, the FDA could rescind our clearances, our reputation with physicians, patients and others may suffer and we could be subject to significant legal liability.

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

The CyberKnife system was initially cleared by regulatory authorities for the treatment of tumors in the brain and neck. More recently, the CyberKnife system has been cleared to treat tumors anywhere in the body where radiation is indicated, and our future growth is dependent in large part on continued growth in full body use of the system. Currently, however, there are a limited number of peer-reviewed medical journal publications regarding the safety and efficacy of the CyberKnife system for treatment of tumors outside the brain or spine. If later studies show that the CyberKnife system is less effective or less safe with respect to particular types of solid tumors, use of the CyberKnife system could fail to increase or could decrease and our growth and operating results would therefore be harmed.

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

We anticipate that a significant portion of our revenue will continue to be derived from sales of the CyberKnife system in foreign markets. This revenue and related operations will therefore continue to be subject to the risks associated with international operations, including:

- economic or political instability;
- shipping delays;
- changes in foreign regulatory laws governing sales of medical devices;
- difficulties in enforcing agreements with and collecting receivables from customers outside the United States;
- longer payment cycles associated with many customers outside the United States;
- adequate reimbursement for the CyberKnife procedure 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; and
- contractual provisions governed by foreign laws and various trade restrictions, including U.S. prohibitions and restrictions on exports of certain products and technologies to certain nations.

In addition, future imposition of, or significant increases in, the level of customs duties, export quotas, regulatory restrictions or trade restrictions could materially harm our business. 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 we are unable to address these risks and challenges effectively, our international operations may not be successful and our business would be materially harmed.

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

We depend on a limited number of distributors in our international markets. These international distribution relationships are exclusive by geographic region. We cannot control the efforts and resources our third-party distributors will devote to marketing the CyberKnife system. Our distributors may not be able to successfully market and sell the CyberKnife system, may not devote sufficient time and resources to support the marketing and selling efforts and may not market the CyberKnife system at prices that will permit the product to develop, achieve or sustain market acceptance. If we or our distributors terminate our existing agreements, finding new distributors could be an expensive and time-consuming process and sales could decrease during and after any transition period. If we are unable to attract additional international distributors, our international revenue may not grow. If our distributors experience difficulties, do not actively market the CyberKnife system 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. In certain cases our distributors are responsible for the service and support of our CyberKnife systems.

We have limited experience and capability in manufacturing and may encounter manufacturing problems or delays that could result in lost revenue.

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

Our manufacturing processes and the manufacturing processes of our third-party suppliers are required to comply with the FDA's Quality System Regulation, or QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, production processes, controls, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. We are also subject to state requirements and licenses applicable to manufacturers of medical devices. Because our manufacturing processes include diagnostic and therapeutic X-ray equipment and laser equipment, we are subject to the electronic product radiation control provisions of the Federal Food, Drug and Cosmetic Act, which requires that we file reports with the FDA, applicable states and our customers regarding the distribution, manufacturing and installation of these types of equipment. The FDA enforces the QSR and the electronic product radiation control provisions through periodic unannounced inspections. We have been, and anticipate in the future to be, subject to such inspections. Our failure or the failure of a third-party supplier to pass a QSR inspection or to comply with these and other applicable regulatory requirements could result in disruption of our operations and manufacturing delays. 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. 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 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.

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 cannot grow or achieve profitability.

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

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

The number of our employees increased from 194 as of June 30, 2005 to 364 as of September 30, 2006. In addition, we have significantly expanded our development and operational facilities, including our recent acquisition of a linac manufacturing facility and our new manufacturing site. In order to implement our business strategy, we expect continued growth in our employee and infrastructure requirements, particularly as we expand our manufacturing and sales and marketing capacities. To manage our growth, we must expand our facilities, augment our management, operational and financial systems, hire and train additional qualified personnel, scale-up our manufacturing capacity and expand our marketing and distribution capabilities. Our manufacturing, assembly and installation process is complex and occurs over many months, and we must effectively scale this entire process to satisfy customer expectations and changes in demand. We also expect to increase the number of sales and marketing personnel as we expand our business. Further, to accommodate our growth and compete effectively, we will be required to improve our information systems. We cannot be certain that our personnel, systems, procedures and internal controls will be adequate to support our future operations. If we cannot manage our growth effectively, our business will suffer.

Any failure in our physician training efforts could result in lower than expected product sales and potential liabilities.

A critical component of our sales and marketing efforts is the training of a sufficient number of physicians to properly utilize the CyberKnife system. We rely on physicians to devote adequate time to learn to use our products. If physicians are not properly trained, they may misuse or ineffectively use our products. This may result in unsatisfactory patient outcomes, patient injury and related liability or negative publicity which could have an adverse effect on our product sales.

We will incur increased costs as a result of being a public company.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the SEC and the NASDAQ Global Market, or NASDAQ, have required changes in corporate governance practices of public companies. In particular, as a public company we will be required to comply with Section 404 of the Sarbanes-Oxley Act of 2002 regarding management assessment of internal controls. We will first become subject to Section 404 in connection with the audit

of our consolidated financial statements for the fiscal year ending June 30, 2008, and we expect to incur substantial additional audit fees and costs for that year's audit as well as for future audits. We expect that being a public company in the current regulatory environment will increase our financial and legal compliance costs and will make some activities more time-consuming and costly. In addition, we will incur other costs associated with public company reporting requirements. We also expect these new rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We are currently evaluating and monitoring developments with respect to these new rules, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

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, short-term and long-term investments and the proceeds from this offering will be sufficient to meet our anticipated cash needs for at least the next 12 months, the timing and amount of our working capital and capital expenditure requirements may vary significantly depending on numerous factors, including:

- market acceptance of our products;
- the need to adapt to changing technologies and technical requirements;
- the existence of opportunities for expansion; and
- access to and availability of sufficient management, technical, marketing and financial personnel.

If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and could result in covenants that would restrict our operations. We have not made arrangements to obtain additional financing, and there is no assurance that financing, if required, will be available in amounts or on terms acceptable to use, if at all.

We may attempt to acquire new businesses, products or technologies, 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 rather than through internal development. The identification of suitable acquisition candidates can be difficult, time consuming and costly, and we may not be able to successfully complete identified acquisitions. Furthermore, even if we successfully complete an acquisition, we may not be able to successfully integrate newly acquired organizations, products or technologies into our operations, and the process of integration could be expensive, time consuming and may strain our resources. In addition, we may be unable to retain employees of acquired companies, or retain the acquired company's customers, suppliers, distributors or other partners who are our competitors or who have close relationships with our competitors. Consequently, we may not achieve anticipated benefits of the acquisitions which could harm our existing business. In addition, future acquisitions could result in potentially dilutive issuances of equity securities or the incurrence of debt, contingent liabilities or expenses, or other charges such as in-process research and development,

any of which could harm our business and affect our financial results or cause a reduction in the price of our common stock.

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

Our manufacturing facility is located in a single location in Sunnyvale, California. We do not maintain a backup manufacturing facility, so we depend on our current facility for the continued operation of our business. In addition, we conduct a significant portion of other activities including administration and data processing at facilities located in the State of California which has experienced major earthquakes in the past, as well as other natural disasters. We carry limited earthquake insurance for inventory only. Such coverage may not be adequate or continue to be available at commercially reasonable rates and terms. In the event of a major earthquake or other disaster affecting our facilities, it could significantly disrupt our operations, delay or prevent product manufacture and shipment for the time required to repair, rebuild or replace our manufacturing facilities, which could be lengthy, and result in large expenses to repair or replace the facilities. In addition, concerns about terrorism or an outbreak of epidemic diseases such as avian influenza or severe acute respiratory syndrome, or SARS, especially in our major markets of North America, Europe and Asia could have a negative effect on travel and our business operations, and result in adverse consequences on our revenues and financial performance.

Risks Related to this Offering

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

The trading prices of the stock of newly public companies can experience extreme price and volume fluctuations. These fluctuations often have been unrelated or out of proportion to the operating performance of these companies. We expect our stock price to be similarly volatile. These broad market fluctuations may continue and could harm our stock price. Any negative change in the public's perception of the prospects of companies that employ similar technology or sell into similar markets could also depress our stock price, regardless of our actual results.

Factors affecting the trading price of our common stock will include:

- regulatory developments related to manufacturing the CyberKnife system;
- variations in our operating results;
- changes in our operating results as a result of problems with our internal controls;
- announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analyst that elects to follow our common stock;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- sales of large blocks of our common stock; and
- changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results.

Substantial sales of our common stock by our stockholders could depress our stock price regardless of our operating results.

Sales of substantial amounts of our common stock in the public market after this offering could reduce the prevailing market prices for our common stock. Upon the closing of this offering, based on 41,954,435 shares outstanding as of June 30, 2006, we will have shares of common stock outstanding. Of these, all of the shares sold in this offering will be freely tradable without restriction or further registration. Substantially all of the 41,954,435 shares of our common stock held by existing stockholders are subject to lock-up agreements with the underwriters which prohibit the sale of such shares for 180 days after the date of this prospectus, subject to an extension of no more than 34 additional days. All of these shares will be eligible for resale upon the expiration of the lock-up period and in some cases to volume restrictions under Rule 144 and our right of repurchase.

Our directors, executive officers and major stockholders will own approximately % of our outstanding common stock after this offering, which could limit your ability to influence the outcome of key transactions, including changes of control.

After this offering, directors, executive officers, and current holders of 5% or more of our outstanding common stock, will, in the aggregate, own approximately % of our outstanding common stock. As a result, a small number of stockholders will have voting control and would be able to control the election of directors and the approval of significant corporate transactions. This concentration of ownership may also delay, deter or prevent a change of control of our company and will make some transactions more difficult or impossible without the support of these stockholders.

We have implemented anti-takeover provisions that 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. See "Description of capital stock—anti-takeover effect of provisions of the amended and restated certificate of incorporation and bylaws" included elsewhere in this prospectus.

An active trading market for our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. Although our common stock has been approved for quotation on NASDAQ, an active trading market for our shares may never develop or be sustained following this offering. Accordingly, you may not be able to sell your shares quickly or at the market price if trading in our stock is not active. The initial public offering price for our common stock was determined through negotiations between the underwriters and us. The initial public offering price may vary from the market price of our common stock after the closing of this offering. Investors may not be able to sell their common stock at or above the initial public offering price.

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

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all future earnings for the operation and expansion of our business and, therefore, do not anticipate declaring or paying cash dividends in the foreseeable future. The payment of dividends will be at the discretion of our board of directors and will depend on our results of operations, capital requirements, financial condition, prospects, contractual arrangements, any limitations on payments of dividends present in our current and future debt agreements, and other factors our board of directors may deem relevant. We are subject to several covenants under our debt arrangements that place restrictions on our ability to pay dividends. If we do not pay dividends, a return on your investment will only occur if our stock price appreciates.

We have broad discretion to use the offering proceeds, and our investment of these proceeds may not yield a favorable, or any, return.

The net majority of the proceeds of this offering are not allocated for specific uses. Additionally, we may decide to use proceeds that are currently anticipated for a specific use for a different purpose. Thus, our management has broad discretion over how these proceeds are used and could spend the proceeds in ways with which you may not agree. We cannot assure you that the proceeds will be invested in a way that yields a favorable, or any, return for us.

New investors in our common stock will experience immediate and substantial dilution.

The initial public offering price will be substantially higher than the book value per share of our common stock. If you purchase common stock in this offering, you will incur dilution of $ in net tangible book value per share of common stock, based on an assumed initial public offering price of $ per share. In addition, the number of shares available for issuance under our stock option and employee stock purchase plans may increase annually without further stockholder approval. Investors will incur additional dilution upon the exercise of stock options and warrants. See "Dilution."

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus includes forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Forward-looking statements should not be read as 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. Forward-looking statements are based on information available at the time those statements are made and/or management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- our ability to otherwise maintain FDA compliance, such as with QSR;
- market acceptance of the CyberKnife system in the United States and abroad;
- the impact of competition and technological change;
- general economic and business conditions, both nationally and in our markets;
- the timing of and change in necessary existing and future regulatory clearances that affect our business;
- our relationships with our distributors;
- our ability to maintain relationships with our key suppliers;
- coverage and reimbursement policies of governmental and private third-party payors, including the Medicare and Medicaid programs; and
- other risk factors included under "Risk factors" in this prospectus.

In addition, in this prospectus, the words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect," "predict," "potential" and similar expressions, as they relate to Accuray, our business and our management, are intended to identify forward-looking statements. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially from those anticipated or implied in the forward-looking statements.

Forward-looking statements speak only as of the date the statements are made. You should not put undue reliance on any forward-looking statements. We assume no obligation to update forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information, except to the extent required by applicable securities laws. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of the shares of common stock offered by us will be approximately $, or approximately $ if the underwriters' over-allotment option is exercised in full, based on an assumed initial public offering price of $ per share and after deducting underwriting discounts and commissions and estimated offering expenses. We will not receive any proceeds from the sale of shares to be offered by the selling stockholders.

The principal purposes of this offering are to obtain additional capital and to create a public market for our common stock. Of the net proceeds we will receive from this offering, we expect to use approximately:

- $50.0 million over the next two years for sales and marketing activities to support the ongoing commercialization of the CyberKnife system, including, but not limited to, expansion of our sales force, additional participation in trade shows and symposia, and expanding our international sales and service presence;
- $40.0 million over the next two years for research and development activities, including support of hardware and software product development and clinical study initiatives; and
- increased working capital and general corporate purposes.

We may also use a portion of the net proceeds for the acquisition of, or investment in, companies, technologies, products or assets that complement our business. We have no present understandings, commitments or agreements to enter into any material acquisitions or investments. Pending these uses, we intend to invest the net proceeds of this offering in short-term, investment-grade interest-bearing securities or guaranteed obligations of the U.S. government.

DIVIDEND POLICY

We have never declared or paid and do not anticipate declaring or paying any cash dividends on our common stock in the near future. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our board of directors and will depend on then existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table shows:

- our capitalization as of June 30, 2006;
- our capitalization as of June 30, 2006, on a pro forma basis, giving effect to the automatic conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock and the exercise of a warrant to purchase 525,000 shares of common stock at an exercise price of $1.00 per share, immediately prior to the closing of this offering as if such conversions and exercise had occurred on June 30, 2006; and
- our capitalization as of June 30, 2006, on a pro forma as adjusted basis, giving effect to the automatic conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock and the exercise of a warrant to purchase 525,000 shares of common stock at an exercise price of $1.00 per share, immediately prior to the closing of this offering as if such conversions and exercise had occurred on June 30, 2006, and the sale by us of shares of common stock in this offering, at an initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses.

	As of June 30, 2006		
	Actual	Pro forma	Pro forma as adjusted
		(unaudited)	(unaudited)
	(in thousands, except share data)		
Redeemable convertible preferred stock, no par value, 30,000,000 shares authorized, 17,419,331 shares issued and outstanding, $40,354 liquidation preference, actual; preferred stock, par value $0.001 per share, 5,000,000 shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	$ 27,504	$ —	$
Stockholders' equity (deficiency):			
Common stock, no par value, 70,000,000 shares authorized; 16,243,150 shares issued and outstanding, actual; 100,000,000 shares authorized, par value $0.001 per share, 41,954,435 shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted	13,276	42	
Additional paid-in capital	43,988	85,251	
Notes receivable from stockholders	(206)	(206)	
Deferred stock-based compensation	(17,272)	(17,272)	
Accumulated deficit	(120,641)	(120,641)	
Stockholders' equity (deficiency)	(80,855)	(52,826)	
Total capitalization	$ (53,351)	$ (52,826)	$

The outstanding share information set forth above is as of June 30, 2006, and excludes:

- 10,900,285 shares of common stock issuable upon the exercise of outstanding options, at a weighted average exercise price of approximately $2.07 per share;
- 2,156,232 shares of common stock reserved for issuance under our 1998 Equity Incentive Plan; and
- shares to be available for issuance under our 2007 Equity Incentive Plan and our Employee Stock Purchase Plan.

DILUTION

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock after this offering. As of June 30, 2006, our pro forma net tangible book value deficiency is approximately $58.8 million, or $1.40 per share of common stock. Pro forma net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by shares of common stock outstanding after giving effect to (1) the conversion of all outstanding shares of our preferred stock into an aggregate of 25,186,285 shares of common stock and (2) the exercise of a warrant to purchase 525,000 shares of common stock at an exercise price of $1.00 per share, immediately prior to the closing of this offering.

Dilution in pro forma net tangible book value per share represents the difference between the amount per share paid by buyers of shares of our common stock in this offering and the pro forma net tangible book value per share of our common stock immediately following this offering.

After giving effect to the receipt of the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share and after expenses, our pro forma net tangible book value as of June 30, 2006, would have been approximately $ million, or $ per share of common stock. This represents an immediate increase in pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution of $ per share to new investors purchasing shares at the initial public offering price. The following table illustrates the per share dilution:

Assumed initial public offering price		$
Pro forma net tangible book value as of June 30, 2006	$ (1.40)	
Increase in pro forma net tangible book value attributable to new investors as of June 30, 2006		
Pro forma net tangible book value as of June 30, 2006, as adjusted to give effect to this offering		
Dilution to new investors		$

The following table shows, on the pro forma basis described above, the difference between existing stockholders and new investors in this offering with respect to the number of shares of common stock purchased from us, the total consideration paid and the average price paid per share, before deducting underwriting discounts and commissions and estimated offering expenses.

	Shares purchased		Total consideration		
	Number	Percent	Amount	Percent	Average price per share
	(in thousands)				
Existing stockholders		%	$	%	$
New investors					
Total		100.0%	$	100.0%	$

The outstanding share information set forth above is as of June 30, 2006, and excludes:

- 10,900,285 shares of common stock issuable upon the exercise of outstanding options, at a weighted average exercise price of approximately $2.07 per share;
- 2,156,232 shares of common stock reserved for issuance under our 1998 Equity Incentive Plan; and
- shares to be available for issuance under our 2007 Equity Incentive Plan and our Employee Stock Purchase Plan.

To the extent that any outstanding options are exercised, new investors will experience further dilution.

SELECTED CONSOLIDATED 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 prospectus. The consolidated statements of operations for the years ended June 30, 2004, 2005 and 2006, and the consolidated balance sheet data at June 30, 2005 and 2006, 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 prospectus. The consolidated statements of operations data for the years ended June 30, 2002 and 2003 and the consolidated balance sheet data at June 30, 2002, 2003 and 2004 are derived from our audited consolidated financial statements not included in this prospectus. The historical results presented below are not necessarily indicative of future results.

	Years ended June 30,				
	2002	2003	2004	2005	2006
	(in thousands, except per share data)				
Consolidated Statements of Operations Data:					
Total net revenue	$ 19,354	$ 2,710	$ 19,569	$ 22,377	$ 52,897
Total cost of revenue[1]	11,721	3,027	8,496	11,115	27,492
Gross profit	7,633	(317)	11,073	11,262	25,405
Operating expenses:					
Selling and marketing[1]	5,053	6,710	10,647	16,361	25,186
Research and development[1]	5,223	5,844	7,311	11,655	17,788
General and administrative[1]	2,755	3,015	4,672	8,129	15,923
Total operating expenses	13,031	15,569	22,630	36,145	58,897
Loss from operations	(5,398)	(15,886)	(11,557)	(24,883)	(33,492)
Interest and other income (expense), net	(399)	46	(136)	(238)	56
Loss before provision for income taxes	(5,797)	(15,840)	(11,693)	(25,121)	(33,436)
Provision for income taxes	—	—	3	68	258
Net loss	(5,797)	(15,840)	(11,696)	(25,189)	(33,694)
Deemed dividend[2]	(6,961)	(339)	—	—	—
Net loss attributable to ordinary stockholders	$ (12,758)	$ (16,179)	$ (11,696)	$ (25,189)	$ (33,694)
Net loss per common share:					
Basic and diluted	$ (1.21)	$ (1.53)	$ (1.00)	$ (1.76)	$ (2.11)
Weighted average common shares outstanding used in computing net loss per share:					
Basic and diluted	10,563	10,608	11,737	14,283	15,997
Pro forma net loss per share, basic and diluted (unaudited)[3]					$ (0.81)
Pro forma weighted average common shares outstanding, basic and diluted (unaudited)[3]					41,709

(1) Includes stock-based compensation expense as follows:

	Years ended June 30,				
	2002	2003	2004	2005	2006
	(in thousands)				
Cost of revenue	$ 132	$ 71	$ 190	$ 454	$ 863
Selling and marketing	96	453	826	1,903	2,569
Research and development	200	319	648	1,157	1,574
General and administrative	400	451	785	2,812	3,237

(2) In accordance with EITF Issue No. 98-5, "Accounting for Convertible Securities With Beneficial Conversion Features or Contingently Adjustable Conversion Features" and EITF Issue No. 00-27, "Application of EITF Issue No. 98-5 to Certain Convertible Instruments," we recognized deemed dividends as related to the contingent beneficial conversion features of our preferred stock.

(3) See note 2 to our consolidated financial statements for a description of the method used in calculating our pro forma net loss per share (unaudited), basic and diluted and pro forma weighted average common shares outstanding (unaudited).

	Years ended June 30,		
	2004	2005	2006
Selected Operating Data:			
Number of CyberKnife systems installed per year			
United States	7	14	22
International	9	10	6
Total	16	24	28
Net cash provided by operating activities (in thousands)	$ 4,906	$ 18,015	$ 25,505

	As of June 30,				
	2002	2003	2004	2005	2006
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 2,063	$ 6,676	$ 9,722	$ 17,024	$ 27,856
Deferred cost of revenue	—	10,987	22,443	36,476	56,588
Total assets	11,925	32,347	52,443	86,860	138,623
Short-term debt	—	277	817	2,893	—
Long-term debt, net of current portion	—	1,151	—	—	—
Deferred revenue	1,287	25,703	47,953	89,975	149,664
Working capital (deficit)	1,428	489	(163)	2,181	(3,783)
Redeemable convertible preferred stock	22,332	27,504	27,504	27,504	27,504
Stockholders' equity (deficiency)	(23,632)	(33,048)	(38,861)	(56,172)	(80,855)

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 prospectus. 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 prospectus, particularly in "Risk Factors."

Overview

We have developed the first and only commercially available intelligent robotic radiosurgery system, the CyberKnife system, designed to treat solid tumors anywhere in the body as an alternative to traditional surgery. The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator, or linac, that moves in three dimensions according to the treatment plan. This combination, which we refer to as intelligent robotics, extends the benefits of radiosurgery to the treatment of tumors anywhere in the body. The CyberKnife system autonomously tracks, detects and corrects for tumor and patient movement in real-time during the procedure, enabling delivery of precise, high dose radiation typically with sub-millimeter accuracy. The CyberKnife procedure requires no anesthesia, can be performed on an outpatient basis and allows for the treatment of patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. In addition, the CyberKnife procedure avoids many of the potential risks and complications that are associated with other treatment options and is more cost effective than traditional surgery.

In July 1999, we obtained 510(k) clearance from the FDA to market the CyberKnife system for the treatment of tumors and certain other conditions in the head, neck and upper spine. In August 2001, we received FDA clearance for the treatment of tumors anywhere in the body where radiation treatment is indicated. In September 2002, we received a CE mark for the sale of the CyberKnife system in Europe. The CyberKnife system has also been approved for various indications in Japan, Korea, Taiwan, China and other countries. We estimate that over 20,000 patients worldwide have been treated with the CyberKnife system since its commercial introduction.

In the United States, we sell to customers, including hospitals and stand-alone treatment facilities, directly through our sales organization, which as of September 30, 2006 included 19 sales personnel. Outside the United States, we sell to customers in over 30 countries directly and through distributors. We have sales and service offices in Paris, France and Hong Kong, China.

Our CyberKnife systems are either sold to our customers or placed with our customers pursuant to our shared ownership programs. As of September 30, 2006, we had 83 CyberKnife systems installed at customer sites, including 73 sold and 10 pursuant to shared ownership programs and 78 pending installation, including 66 sold and 12 pursuant to shared ownership programs. Of the 73 systems sold and installed, 42 are in the United States, 24 are in Asia and 7 are in Europe. Of the 66 sold and pending installation, 35 are in the United States, 25 are in Asia and 6 are in Europe. Under the shared ownership program, we retain title to the CyberKnife system while the customer has use of the system. Our shared ownership contracts generally require a minimum monthly payment from the customer, and we may earn additional revenue through the use of the system at the site. Generally, minimum monthly payments are equivalent to the revenue generated from treating three to four patients per month, and any revenue received from additional patients is shared between us and the customer. As of September 30, 2006, we had 22 shared ownership programs, of which 10 are installed and 12 are pending installation. Our legacy shared ownership program was known as the placement program.

We manufacture and assemble our CyberKnife systems at our manufacturing facility in Sunnyvale, California. We purchase major components, including the robotic manipulator, treatment table,

magnetron, imaging cameras and computers, from outside suppliers, some of which are single source. We manufacture certain other electronic and electrical subsystems, including the linear accelerator. We then assemble and integrate these components with our proprietary software and perform testing prior to shipment to customer sites.

We generate revenue by selling the CyberKnife system and by providing ongoing services and upgrades to customers following installation of the CyberKnife system. The current list price for the CyberKnife system is approximately $4.1 million, which includes installation, initial training and a one-year warranty. We also offer optional hardware and software, technical enhancements and upgrades to the CyberKnife system, as part of our multiyear service plans. Currently, our most comprehensive service plan is our Diamond Elite multiyear service plan, or Diamond plan. Under our Diamond plan, customers are eligible to receive up to two upgrades per year, when and if available. The Diamond plan has a list price of $460,000 per year, and provides for annual renewal for four years including the one-year warranty period. The customer may cancel the service plan at any time. As of September 30, 2006, 59 of our customers had purchased service plans.

Our total net revenue was $19.6 million, $22.4 million and $52.9 million during the years ended June 30, 2004, 2005 and 2006, respectively. Our net loss was $11.7 million, $25.2 million and $33.7 million during the years ended June 30, 2004, 2005 and 2006, respectively. Our net cash provided by operating activities was $4.9 million, $18.0 million and $25.5 million during the years ended June 30, 2004, 2005 and 2006, respectively. As of June 30, 2006, our backlog was approximately $312.2 million. We anticipate that this backlog will be recognized over the next five years as we complete installations, deliver upgrades and provide service.

Material Weaknesses in Internal Controls

In connection with the audit of our consolidated financial statements for the years ended June 30, 2004, 2005 and 2006, our independent registered public accounting firm identified material weaknesses and significant deficiencies in our internal controls over financial reporting. These weaknesses and deficiencies relate to a lack of segregation of duties and the misapplication of accounting policies, including policies related to revenue recognition and stock-based compensation.

Our efforts to remediate these material weaknesses in our internal controls over financial reporting consist of the following corrective actions: (i) hiring and training additional, qualified finance and accounting personnel; and (ii) strengthening our processes and procedures related to complex revenue recognition and equity transactions. However, even after these corrective actions are implemented, the effectiveness of our controls and procedures may be limited by a variety of risks.

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

Financial Operations

Sales and Installation Cycle

The CyberKnife system has a relatively long sales and installation cycle because it is a major capital item and requires the approval of senior management at purchasing institutions. The typical sales and installation cycle is 12 to 18 months in duration and involves multiple steps, which may include pre-selling activity, execution of a letter of intent, or LOI, execution of contracts for the purchase or acquisition of the CyberKnife system and multiyear service plans, and installation of the CyberKnife system. Prior to installation, a purchasing institution must typically obtain a radiation device installation permit, and in some cases, a certificate of need, both of which must be granted by state and local government bodies. In addition, the purchasing institution must build a radiation shielded facility or upgrade an existing facility to house the CyberKnife system. On average it takes three months from the signing of an LOI to the execution of a contract. We typically receive a $450,000 deposit at the time the CyberKnife system purchase contract is executed, and the remaining balance for the purchase of the CyberKnife system upon installation. The customer also typically signs a service plan contract at the time of signing a CyberKnife system purchase contract.

Upon installation, we recognize the CyberKnife system purchase price minus the fair value of one year of service. We recognize the fair value of the first year of service as revenue pro rata over the twelve months following installation. In addition, if the customer has purchased our Diamond plan and assuming annual renewals, we would receive the $460,000 payment at the beginning of the second, third and fourth years of the multiyear service plan and recognize the revenue pro rata over each year.

Legacy Service Plans

Prior to introducing our Diamond plan, we offered a Platinum Elite multiyear service plan, or Platinum plan. These legacy service plans are structured so that we have an obligation to deliver two upgrades per year over the course of the multiyear service plan. If we fail to deliver the upgrades, our customers are entitled to receive refunds of up to $200,000. We no longer offer these legacy service plans to new customers.

The Platinum plan obligates us to deliver two upgrades per year during the term of the contract. We have not yet established fair value for those future obligations; hence, generally accepted accounting principles in the United States, or GAAP, requires that we cannot begin to recognize any of the revenue derived from the sale of the CyberKnife system or the associated service plans until those obligations have been fulfilled. Therefore, the payments made by our customers who have our legacy Platinum plan are categorized as deferred revenue and will be recognized as revenue when we fulfill all obligations to deliver upgrades. Once we fulfill all upgrade obligations with respect to a specific Platinum plan, we will ratably recognize the revenue from the purchase of the CyberKnife system and the Platinum plan over the remaining life of the contract.

Warranty

All customers purchasing a CyberKnife system receive a one-year warranty. In the event that a customer does not purchase a multiyear service plan, we recognize the CyberKnife system purchase price minus the fair value of one year of support upon installation. We recognize the value of one year of support pro rata over the twelve months following installation. If the customer does purchase a multiyear service plan, the revenue recognition is as described above.

Shared Ownership Programs Revenue

As of June 30, 2006, our shared ownership programs involved U.S. sites only. Revenue from our shared ownership programs that is based on a minimum monthly payment is recognized monthly.

Revenue in excess of the monthly minimum is recognized upon our receipt of a usage report from our customer. We recognized revenue from shared ownership programs of $4.8 million, $8.1 million and $8.1 million for the years ended June 30, 2004, 2005 and 2006, respectively. In limited cases, we received nonrefundable upfront payments from shared ownership program customers which are treated as deferred revenue and recognized over the term of the contract.

The CyberKnife system shared ownership units are recorded within property, plant and equipment and are depreciated over their estimated life of ten years. Depreciation and warranty expense attributable to shared ownership units are recorded within product costs of revenue as they are incurred.

Japan Customized Service Revenue

In May and December 2003, we entered into separate contractual arrangements to deliver customized services to our distributor in Japan for 22 CyberKnife systems previously sold. These customized services consist of two upgrade levels and are being delivered over an extended period concurrent with the distributor's efforts to coordinate delivery with their end user customers. Once the obligations under the upgrade programs for these 22 systems are complete, we do not plan to offer this customized service program and will instead be offering our standard multiyear service plans.

International Sales Revenue

For international sales, we recognize revenue once we have met all of our obligations associated with the purchase agreement, other than for undelivered service elements for which we have vendor specific objective evidence, or VSOE, of fair value. In most cases, this occurs after the distributor has shipped the unit to the end user, assuming all other obligations have been satisfied. Payments are sometimes secured through letters of credit. In situations where we are directly responsible for installation, we recognize revenue once we have installed the CyberKnife system and have confirmed performance against specification.

In November 2005, we introduced the Ruby multiyear service plan, or Ruby plan, for international customers. Under the Ruby plan, customers are eligible to receive software only upgrades when and if available. We expect to recognize revenue for Ruby plans in a manner similar to revenue recognition under our Diamond plans.

In situations with legacy plans where we have future obligations related to software upgrades that are subject to potential refunds, we defer revenue from the sale and service of the CyberKnife system until the final upgrade has been delivered and accepted. After we have delivered all upgrades associated with a service plan and thus eliminated any contractual right to a refund, we ratably recognize the revenue from the sale of the CyberKnife system and the plan over the remaining life of the contract or until we have VSOE of the fair value of remaining undelivered elements. Net revenue from international customers was $6.7 million, $8.1 million and $12.1 million for the years ended June 30, 2004, 2005 and 2006, respectively.

Backlog

We define backlog as the sum of the following two components: deferred revenue and future payments that our customers are contractually committed to make, but which we have not yet received. Backlog includes contractual commitments from CyberKnife system purchase agreements, service plans and minimum payment requirements associated with our shared ownership programs.

As of June 30, 2006, our backlog was approximately $312.2 million, which includes $149.7 million of deferred revenue and $162.5 million of contractually committed future payments from customers. Of the total backlog, $187.7 million represents CyberKnife system sales, and $124.5 million represents

revenue through service plans and shared ownership programs. We anticipate that this backlog will be recognized over the next five years as installations occur, upgrades are delivered and services are provided. Although backlog includes contractual commitments from our customers, we may be unable to convert all of this backlog into recognized revenue due to factors outside our control.

Results of Operations

Overview

Our results of operations are divided into the following components:

Net revenue. Our net revenue consists primarily of revenue from the sale of CyberKnife systems, revenue generated from shared ownership programs, revenue generated from sales of upgrades, customized services and multiyear service plans and revenue from the sale of linacs for other uses.

Cost of revenue. Cost of revenue consists primarily of material, labor and overhead costs. In future periods we expect cost of revenue to decrease as a percentage of total net revenue due to improved absorption of manufacturing overhead costs associated with increased production volumes, improved efficiencies for supplies and materials and improved labor and manufacturing efficiencies.

Selling and marketing expenses. Selling and marketing expenses consist primarily of costs for personnel and costs associated with participation in medical conferences, physician symposia, and promotional activities. In future periods, we expect selling and marketing expenses to grow in absolute terms as we increase headcount and further increase participation in trade shows and symposia and invest in other marketing and promotional activities, but to continue to decrease as a percentage of total net revenue as we leverage our existing infrastructure and realize economies of scale.

Research and development expenses. Research and development expenses consist primarily of activities associated with our product development, regulatory, and clinical organizations. In future periods, we expect research and development expenses to grow in absolute terms as we increase headcount and development activities, but to decrease as a percentage of total net revenue as we leverage our existing infrastructure and realize economies of scale.

General and administrative expenses. General and administrative expenses consist primarily of compensation and related costs for finance and human resources, and expenses related to accounting, legal and other consulting fees. In future periods, we expect general and administrative expenses to grow in absolute terms as we become subject to the reporting requirements of a public company and incur additional costs related to the overall growth of our business, but to decrease as a percentage of total net revenue as we leverage our existing infrastructure and realize economies of scale.

Interest and other income. Interest and other income consists primarily of interest earned on our cash and cash equivalents.

Interest and other expense. Interest and other expense consists primarily of interest expense related to advance payments received in relation to our shared ownership program.

Deferred Revenue—Legacy Multiyear Service Plans

We are required to defer all of the revenue associated with our legacy multiyear service plans, including our Platinum and Gold service plans, until we have satisfied all of the specified obligations related to the delivery of upgrades to the CyberKnife system during the life of the service plan. This includes deferring the cash received for the purchase of the CyberKnife system and multiyear service plans until we have delivered all upgrades for which the customer is eligible to receive. Once we have satisfied obligations for delivery of upgrades under the plans, we recognize revenue pro rata over the remaining life of the service plan. We have not offered these legacy multiyear service plans to new

customers since we introduced our Diamond plan in October 2005, but continue to service 45 legacy plans as of September 30, 2006. Therefore, our deferred revenue has been higher in certain periods where we have installed more units with legacy contracts, and it will be higher in the short term until we can satisfy the contractual obligations and recognize the revenue associated with those installed units. This has led to significant fluctuations in total net revenue in historical periods. Consequently, our operating expenses as a percentage of total net revenue are relatively higher, when compared to companies at a similar stage of commercialization, in the periods where we have had a higher mix of deferred revenue and thus lower total net revenue. In future periods, we expect operating expenses as a percentage of total net revenue to decline.

Year Ended June 30, 2005 Compared to Year Ended June 30, 2006

Net revenue. Total net revenue increased from $22.4 million for the year ended June 30, 2005 to $52.9 million for the year ended June 30, 2006. Product revenue increased from $9.6 million for the year ended June 30, 2005 to $36.1 million for the year ended June 30, 2006, primarily attributable to an increase from fiscal 2005 to 2006 in the number of CyberKnife system units shipped and installed and a change in the mix of service plans. In the year ended June 30, 2005, 24 CyberKnife system units were installed, including 21 units sold, and 3 units attributable to our shared ownership programs. In the year ended June 30, 2006, 28 were installed, including 25 that were sold, and 3 that were attributable to our shared ownership programs. Pursuant to our service plans, we recognized revenue from the sale of 2 and 11 CyberKnife systems in fiscal 2005 and 2006, respectively. Service revenue increased from $3.1 million for the year ended June 30, 2005 to $4.8 million for the year ended June 30, 2006, primarily attributable to an increase in the number of customer sites under a service plan. Revenue from upgrades and sales of linacs classified as "Other revenue" in our consolidated statements of operations, increased from $1.6 million for the year ended June 30, 2005 to $3.8 million for the year ended June 30, 2006.

Cost of revenue. Total cost of revenue increased from $11.1 million for the year ended June 30, 2005 to $27.5 million for the year ended June 30, 2006. The increase was primarily attributable to an increase in CyberKnife systems installed and recognized as revenue during fiscal 2006 compared to fiscal 2005, as well as an increase of $409,000 in stock-based compensation expense. As a percentage of total net revenue, total cost of revenue was 49.7% and 52.0% for the year ended June 30, 2005 and 2006, respectively. The increase in total cost of revenue as a percentage of total net revenue was a result of costs associated with introducing our latest generation CyberKnife system.

Selling and marketing expenses. Selling and marketing expenses increased from $16.4 million for the year ended June 30, 2005 to $25.2 million for the year ended June 30, 2006. The increase was primarily attributable to an increase of $3.0 million in salary and related costs largely due to increased headcount, an increase of $1.4 million in travel and related expenses attributable to selling and marketing activities, an increase of $1.1 million in consulting expenses, an increase of $1.0 million in marketing and promotional activities, an increase of $820,000 in sales commission expenses resulting from increased sales volume and an increase of $666,000 in stock-based compensation expense. As a percentage of total net revenue, selling and marketing expenses decreased from 73.1% for the year ended June 30, 2005 to 47.6% for the year ended June 30, 2006.

Research and development expenses. Research and development expenses increased from $11.7 million for the year ended June 30, 2005 to $17.8 million for the year ended June 30, 2006. The increase was primarily attributable to an increase of $3.4 million in salary and related costs largely due to increased headcount, an increase of $1.5 million in consulting services, an increase of $515,000 in purchases of non-inventory materials and an increase of $417,000 in stock-based compensation expense. As a percentage of total net revenues, research and development expenses decreased from 52.1% for the year ended June 30, 2005 to 33.6% for the year ended June 30, 2006.

General and administrative expenses. General and administrative expenses increased from $8.1 million for the year ended June 30, 2005 to $15.9 million for the year ended June 30, 2006. The increase was primarily attributable to an increase in legal and accounting costs of $3.4 million, an increase in salary and related costs of $2.1 million, an increase of $565,000 in other consulting fees and an increase of $425,000 in stock-based compensation expense. As a percentage of total net revenue, general and administrative expenses decreased from 36.3% for the year ended June 30, 2005 to 30.1% for the year ended June 30, 2006.

Interest and other income. Interest and other income increased from $156,000 for the year ended June 30, 2005 to $438,000 for the year ended June 30, 2006. The increase was due to larger cash balances kept in interest bearing accounts.

Interest and other expense. Interest and other expense decreased from $394,000 for the year ended June 30, 2005 to $382,000 for the year ended June 30, 2006. The decrease was primarily attributable to a decrease in interest expense on advanced payments received from third party financing arrangements in connection with our shared ownership programs.

Provision for income taxes. The provision for income taxes increased from $68,000 for the year ended June 30, 2005 to $258,000 for the year ended June 30, 2006 due to an increase in foreign operations, as well as federal alternative minimum tax and additional state taxes.

As of June 30, 2006, we had federal and state net operating loss carryforwards of $40.6 million and $16.6 million, respectively. These federal and state net operating loss carryforwards are available to offset against future taxable income, if any, in varying amounts and will begin to expire in varying amounts beginning in 2009 and 2007 for federal and state purposes, respectively. The amounts of and benefits from net operating loss carryforwards may be subject to a substantial annual limitation due to changes in ownership under the Internal Revenue Code of 1986. The annual limitation may result in the expiration of our net operating losses before they can be used. In addition, among other matters, realization of the entire deferred tax asset is dependent on our ability to generate sufficient taxable income prior to the expiration of the carryforwards. While we had taxable income in 2006, based on the available objective evidence and the history of losses, we cannot conclude that the net deferred tax assets will be realized. Accordingly, we have recorded a valuation allowance equal to the amount of our net deferred tax assets.

Year Ended June 30, 2004 Compared to Year Ended June 30, 2005

Net revenue. Total net revenue increased from $19.6 million for the year ended June 30, 2004 to $22.4 million for the year ended June 30, 2005. The increase was primarily attributable to increases in shared ownership revenue and service revenue, offset by a decrease in product revenue. The decrease in product revenue from $12.6 million for the year ended June 30, 2004 to $9.6 million for the year ended June 30, 2005 was primarily due to a change in the mix of service plans in fiscal 2005 versus fiscal 2004. In the year ended June 30, 2004, 16 CyberKnife systems were installed, including 15 units sold and 1 unit attributable to our shared ownership programs. In the year ended June 30, 2005, 24 CyberKnife systems were installed, including 21 units sold and 3 units attributable to our shared ownership programs. Pursuant to our service plans, we recognized revenue from the sale of 5 and 2 CyberKnife systems in fiscal 2004 and 2005, respectively. Shared ownership revenue increased from $4.8 million for the year ended June 30, 2004 to $8.1 million for the year ended June 30, 2005, primarily due to an increase in the number of shared ownership sites and an increase in patient treatment volume at the existing sites. Service revenue increased from $2.0 million for the year ended June 30, 2004 to $3.1 million for the year ended June 30, 2005, due to an increase in the number of customer sites under a service program. Other revenue increased from $125,000 for the year ended June 30, 2004 to $1.6 million for the year ended June 30, 2005 due to an increase in the number of shipped upgrade units.

Cost of revenue. Total cost of revenue increased from $8.5 million for the year ended June 30, 2004 to $11.1 million for the year ended June 30, 2005. The increase was primarily attributable to an increase in cost of shared ownership revenue from $1.1 million for the year ended June 30, 2004 to $1.6 million for the year ended June 30, 2005, and an increase in cost of service revenue from $1.3 million for the year ended June 30, 2004 to $2.0 million for the year ended June 30, 2005. The increase in cost of shared ownership revenue is primarily due to an increase in the number of shared ownership sites, and the increase in cost of service revenue is primarily due to an increase in number of customer sites under a service plan. As a percentage of total net revenue, total cost of revenue was 43.4% and 49.7% for the years ended June 30, 2004 and 2005, respectively. The increase in total cost of revenue as a percentage of total net revenue in fiscal 2005 was due primarily to the decrease in product revenue, which typically results in higher gross margins than our other sources of revenue.

Selling and marketing expenses. Selling and marketing expenses increased from $10.6 million for the year ended June 30, 2004 to $16.4 million for the year ended June 30, 2005. The increase was primarily attributable to an increase of $2.5 million in salary and related costs, largely due to increased headcount, an increase of $1.1 million in stock-based compensation expense, an increase of $964,000 in travel, an increase of $778,000 in marketing and promotional activities and an increase of $375,000 in sales commission expenses resulting from increased sales volume. As a percentage of total net revenue, selling and marketing expenses were 54.4% and 73.1% for the years ended June 30, 2004 and 2005, respectively.

Research and development expenses. Research and development expenses increased from $7.3 million for the year ended June 30, 2004 to $11.7 million for the year ended June 30, 2005. The increase was primarily attributable to an increase in salary and related costs of $1.8 million, an increase in consulting services of $1.7 million, and an increase of $509,000 in stock-based compensation expense. As a percentage of total net revenue, research and development expenses increased from 37.4% for the year ended June 30, 2004 to 52.1% for the year ended June 30, 2005.

General and administrative expenses. General and administrative expenses increased from $4.7 million for the year ended June 30, 2004 to $8.1 million for the year ended June 30, 2005. The increase was primarily attributable to an increase of $2.0 million in stock-based compensation expense, an increase of $1.1 million in salary and related costs and an increase of $345,000 in consulting expenses. As a percentage of total net revenue, general and administrative expenses were 23.9% for the year ended June 30, 2004 and 36.3% for the year ended June 30, 2005.

Interest and other income. Interest and other income increased from $13,000 for the year ended June 30, 2004 to $156,000 for the year ended June 30, 2005. This increase was due to larger cash balances kept in interest bearing accounts.

Interest and other expense. Interest and other expense increased from $149,000 for the year ended June 30, 2004 to $394,000 for the year ended June 30, 2005. Interest and other expense for the year ended June 30, 2005 was comprised primarily of $190,000 in interest expense related to advanced payments received in relation to the shared ownership program and $93,000 of interest expense related to a note payable to American Science and Engineering, Inc., or AS&E, associated with the acquisition of the High Energy Systems, or HES, business.

Provision for income taxes. The provision for income taxes increased from $3,000 for the year ended June 30, 2004 to $68,000 for the year ended June 30, 2005 due to an increase in foreign operations and additional state taxes.

Stock-Based Compensation Expense

Stock-based compensation expense is reflected on our income statement in accordance with Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, or SFAS 123, and SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*, or SFAS 148. In accordance with the requirements of SFAS 123, we have recorded deferred stock-based compensation for the estimated fair value of options awarded on the date of grant. This deferred stock-based compensation is being amortized to expense over the period during which the options become exercisable, generally four years. During the years ended June 30, 2004, 2005 and 2006, we reversed $1.1 million, $1.2 million and $1.7 million, respectively, of deferred stock-based compensation expense related to cancellations of unvested options of certain employees who had been granted stock options and subsequently terminated their employment with us. During the years ended June 30, 2004, 2005 and 2006, we amortized $2.3 million, $5.5 million and $7.9 million, of stock-based compensation expense, respectively, for stock options granted to employees.

The stock-based compensation expense related to non-employees fluctuates as the underlying assumptions fluctuate. During the years ended June 30, 2004, 2005 and 2006, we recognized $137,000, $164,000 and $186,000 of stock-based compensation expense, respectively, for stock options granted to non-employees. For certain stock option grants, we made modifications to the option terms. These modifications included extension of the vesting period and acceleration of vesting. During the years ended June 30, 2004, 2005 and 2006, we recognized $0, $631,000 and $112,000 of stock-based compensation expense, respectively, for modifications of stock options granted.

High Energy Systems Acquisition

In January 2005, we acquired AS&E's HES business for $8.4 million. This acquisition included the intellectual property associated with our X-band linac and included the hiring of key employees from AS&E. HES had been the sole source manufacturer of the linac used in the CyberKnife system. We believe that the HES acquisition stabilizes the sourcing of a component critical to the CyberKnife system and provides opportunities for focused cost reduction efforts to improve overall product margins. In addition to making and developing our own compact linacs, we supply linacs to AS&E for non-destructive testing and national security uses and to a medical device manufacturer for medical applications.

Liquidity and Capital Resources

We have used cash from operations and the sale of our equity securities to fund our working capital needs and our capital expenditure requirements. Since our inception and through June 30, 2006, we have obtained financing of $40.8 million primarily through private placements of debt and equity securities, and the exercise of warrants and options. At June 30, 2006, we had $27.9 million in cash and cash equivalents. We believe that we have sufficient cash resources and anticipated cash flows, without the proceeds of this offering, to continue in operation for at least the next 12 months.

Cash Flows From Operating Activities

Net cash provided by operating activities was $25.5 million for the year ended June 30, 2006. Our net loss of $33.7 million during fiscal 2006 was offset by a $39.6 million increase in deferred revenue, net of deferred cost of revenue, non-cash charges of $8.2 million related to stock-based compensation charges and $3.8 million of depreciation and amortization expense on purchases of property and equipment. The increase in deferred revenue, net of deferred cost of revenue, was primarily a result of the timing differences between invoicing customers under service contracts and the recognition of revenue over the contractual service period, and the continued installation of units covered by our legacy service plans. Other significant working capital changes that contributed to positive cash flow in

fiscal 2006 included an increase in customer advances of $10.9 million due to increased payments made by customers in advance of product shipments and an increase in accrued liabilities of $9.4 million primarily due to increases in accrued commissions on higher revenues and other compensation related accruals due to increased headcount. Significant working capital changes that offset positive cash flows in fiscal 2006 included an increase in accounts receivable of $6.6 million and an increase in inventory of $4.3 million as a result of increased revenues and volumes of orders from our customers.

Net cash provided by operating activities was $18.0 million for the year ended June 30, 2005. Our net loss of $25.2 million during fiscal 2005 was offset by a $28.0 million increase in deferred revenue, net of deferred cost of revenue, non-cash charges of $6.3 million related to stock-based compensation charges and $2.1 million of depreciation and amortization expense on purchases of property and equipment. The increase in deferred revenue, net of deferred cost of revenue, was primarily a result of the continued installation of units covered by our legacy service plans. Other significant working capital changes that contributed to positive cash flow in fiscal 2005 included customer advances of $3.7 million due to increased payments made by customers in advance of product shipment, an increase in accounts payable of $2.1 million and an increase in accrued liabilities of $1.9 million due to increases in the volume of our business. Significant working capital changes that offset positive cash flows in fiscal 2005 included an increase in inventory of $2.3 million as a result of increased volumes of orders from our customers and inventory acquired in the HES acquisition.

Net cash provided by operating activities was $4.9 million for the year ended June 30, 2004. Our net loss of $11.7 million during fiscal 2004 was offset by a $10.8 million increase in deferred revenue, net of deferred cost of revenue, non-cash charges of $2.4 million related to stock-based compensation charges and $1.5 million of depreciation and amortization expense on purchases of property and equipment. The increase in deferred revenue, net of deferred cost of revenue, was primarily a result of the continued installation of units covered by our legacy service plans. Other significant working capital changes that contributed to positive cash flow in fiscal 2004 included customer advances of $1.8 million due to increased payments made by customers in advance of product shipment and an increase in accrued liabilities of $1.4 million and an increase in accounts payable of $1.1 million due to increases in the volume of our business.

Cash Flows From Investing Activities

Net cash used in investing activities was $12.4 million for the year ended June 30, 2006 compared to $12.3 million for the year ended June 30, 2005 and $5.3 million for the year ended June 30, 2004. The net cash used in investing activities in fiscal 2006 was primarily due to purchases of property and equipment of $13.6 million. In fiscal 2005, net cash used in investing activities was primarily due to purchases of property and equipment of $6.2 million and cash paid for the acquisition of HES of $5.6 million. Net cash used in investing activities in fiscal 2004 was due to purchases of property and equipment of $5.6 million.

Cash Flows From Financing Activities

Net cash used in financing activities was $2.2 million for the year ended June 30, 2006. Net cash provided by financing activities was $1.6 million for the year ended June 30, 2005 and $3.4 million for the year ended June 30, 2004. The net cash used in financing activities in fiscal 2006 was due to the payment of a note payable of $3.0 million offset by proceeds from the exercise of common stock options and common stock warrants of $705,000. In fiscal years 2005 and 2004, net cash provided by financing activities was attributable to proceeds from the exercise of common stock options and common stock warrants of $1.7 million and $3.4 million, respectively.

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 the CyberKnife system, shared ownership programs and service plans;
- costs associated with our sales and marketing initiatives and manufacturing activities;
- rate of progress and cost of our research and development activities;
- costs of obtaining and maintaining FDA and other regulatory clearances of the CyberKnife system;
- effects of competing technological and market developments; and
- number and timing of acquisitions and other strategic transactions.

We believe that our current cash and cash equivalents, along with the cash we expect to generate from operations and our net proceeds from this offering, will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least 12 months. If these sources of cash and the net proceeds from this offering are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities or obtain a credit facility. 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 table is a summary of our long-term contractual cash obligations as of June 30, 2006:

	Payments due by period			
		Less than		
	Total	1 year	1 – 3 years	4 – 5 years
	(in thousands)			
Operating leases	$6,715	$1,984	$4,023	$708

Off Balance Sheet Arrangements

We do not have any off balance sheet arrangements.

Inflation

We do not believe that inflation has had a material impact on our business and operating results during the periods presented.

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 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 that are not readily apparent from other sources. Actual results could therefore differ materially from those estimates under different assumptions or conditions.

Our significant accounting policies are more fully described in the notes to our consolidated financial statements included elsewhere in this prospectus. We believe the following are our critical accounting policies including the more significant estimates and assumptions used in preparation of our consolidated financial statements.

Revenue Recognition

Revenue is generated from the sale of our products, our shared ownership programs, and by providing related services, which include installation services, post-contract customer support, or PCS, training and consulting. Our products and upgrades to those products include more than incidental software and accordingly, we account for the sale of our products pursuant to Statement of Position No. 97-2, *Software Revenue Recognition*, or SOP 97-2, as amended.

We recognize product revenues, for sales of the CyberKnife system, replacement parts and accessories, when there is persuasive evidence of an arrangement, the fee is fixed or determinable, collection of the fee is probable and delivery has occurred as prescribed by SOP 97-2. Payments received in advance of product shipment are recorded as customer advances and are recognized as revenue or deferred revenue upon product shipment or installation.

For arrangements with multiple elements, we allocate arrangement consideration to services and PCS, based upon VSOE of fair value of the respective elements. VSOE of fair value for the services element is based upon our standard rates charged for the services when such services are sold separately or based upon the prices established by management having the relevant authority when that service is not yet being sold separately. When contracts contain multiple elements, and VSOE of fair value exists for all undelivered elements, we account for the delivered elements, principally the CyberKnife system unit, based upon the "residual method" as prescribed by SOP No. 98-9, *Modification of SOP No. 97-2 with Respect to Certain Transactions.* If VSOE of fair value does not exist for the undelivered elements, all revenue is deferred until the earlier of: (1) delivery of all elements; or (2) establishment of VSOE of fair value for all undelivered elements.

Upgrade services revenues relate to the sale of specialized services specifically contracted to provide current technology capabilities for units previously sold through a distributor into the Japan market. There are two upgrade programs, one of which includes training and PCS elements. Both programs include elements where VSOE of fair value has not been established for the PCS. As a result, associated revenues are deferred and recognized ratably over the term of the PCS arrangement, generally four years.

Service revenue for providing PCS, which includes warranty services, extended warranty services, unspecified when-and-if available product updates, and technical support is deferred and recognized ratably over the service period, generally one year, until no further obligation exists. At the time of sale, we provide for the estimated incremental costs of meeting product warranty if the incremental warranty costs are expected to exceed the related service revenues. Training and consulting service revenues, that are not deemed essential to the functionality of the CyberKnife system, are recognized as such services are performed. Costs associated with providing PCS and maintenance services are recognized when incurred, except when those costs are related to units where revenue recognition has been deferred. In those cases, the costs are deferred until the recognition of the related revenue and are recognized over the period of revenue recognition.

For all sales, we use either a signed agreement or a binding purchase order as evidence of an arrangement. Sales to third party distributors are evidenced by a distribution agreement governing the relationship together with binding purchase orders on a transaction-by-transaction basis. We record revenue from arrangements with distributors based on a sell-through method where revenue is recognized upon shipment of the products to the end user customer once all revenue recognition criteria are met. These criteria require that persuasive evidence of an arrangement exists, the fees are fixed or determinable, collection of the resulting receivable is probable and there is no right of return. Our agreements with customers and distributors do not contain product return rights.

We assess the probability of collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. We generally do not request collateral from our customers. If we determine that collection of a fee is not probable, we will defer the fee and recognize revenue upon receipt of cash.

We also enter into shared ownership programs with certain customers. Under the terms of such programs, we retain title to the CyberKnife system, while the customer has use of the system. We generally receive a minimum monthly payment and earn additional revenues from the customer based upon its use of the product. We may provide unspecified upgrades to the products during the term of each program, when and if available. Upfront non-refundable payments from the customer are deferred and recognized as revenue over the contractual period. Revenues from shared ownership programs are recorded as they become earned and receivable, and are included within shared ownership revenue in the statement of operations.

The CyberKnife system shared ownership units are recorded within property, plant and equipment on our balance sheet and are depreciated over their estimated useful life of ten years. Depreciation and warranty expense attributable to the shared ownership units are recorded within product cost of revenue as they are incurred.

Deferred Revenue and Deferred Cost of Revenue

Deferred revenue consists of deferred product revenue, deferred shared ownership revenue, deferred service revenue and deferred other revenue. Deferred product revenue arises from the timing differences between the shipment of products and satisfaction of all revenue recognition criteria consistent with our revenue recognition policy. Deferred shared ownership revenue results from the receipt of advance payments of monthly minimum lease payments, which will be recognized ratably over the term of the shared ownership program. Deferred service revenue results from the advance payment for services to be delivered over a period of time, usually one year. Service revenue is recognized ratably over the service period. Deferred other revenue results primarily from the Japan upgrade services programs and is due to timing difference between the receipt of cash payments for those upgrades and final delivery to the end user customer. Deferred cost of revenue consists of the direct costs associated with the manufacture of units, direct service costs for which the revenue has been deferred in accordance with our revenue recognition policies and deferred costs associated with Japan upgrade revenues. Deferred revenue and associated deferred cost of revenue that are expected to be realized within one year are classified as current liabilities and current assets, respectively.

Stock-Based Compensation Expense

Effective July 1, 2003, we began to account for stock-based employee compensation arrangements in accordance with SFAS 123 and SFAS 148. Under SFAS 123, stock-based compensation expense is measured on the date of grant based on the fair value of the award. Upon adoption of this standard, we elected to use the retrospective restatement method of transition.

We believe the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated at the date of

grant using the Black-Scholes option pricing model, as prescribed by SFAS 123, using fair values of common stock between $2.63 and $7.63 per share and the following weighted-average assumptions during the years ended June 30, 2004, 2005 and 2006:

	Years ended June 30,		
	2004	2005	2006
Risk-free interest rate	3.77%	3.81%	4.42%
Dividend yield	—	—	—
Weighted-average expected life	6.25 years	6.25 years	6.25 years
Expected volatility	99.6%	94.8%	86.7%

In accordance with the requirements of SFAS 123, we have recorded deferred stock-based compensation for the estimated fair value of our options on the date of grant. This deferred stock-based compensation is amortized to expense over the period during which the options become exercisable, generally four years. During the years ended June 30, 2004, 2005 and 2006, we reversed $1.1 million, $1.2 million and $1.7 million, respectively, of deferred stock-based compensation related to cancellations of unvested options of certain employees who had been granted stock options and subsequently terminated their employment with us. During the years ended June 30, 2004, 2005 and 2006, we amortized $2.3 million, $5.5 million and $7.9 million of stock-based compensation expense, respectively, for stock options granted to employees.

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options are earned in accordance with SFAS 123 and Emerging Issues Task Force No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. We believe that the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated using the Black-Scholes option pricing model, as prescribed by SFAS 123, using fair values of common stock between $2.63 and $7.63 per share and the following weighted-average assumptions during the years ended June 30, 2004, 2005 and 2006:

	2004	2005	2006[1]
Risk-free interest rate	4.45%	4.20%	—
Dividend yield	—	—	—
Weighted-average expected life	10 years	10 years	—
Expected volatility	75.0%	71.0%	—

(1) No options granted to non-employees in 2006.

The stock-based compensation expense related to non-employees fluctuates as the underlying assumptions fluctuate. During the years ended June 30, 2004, 2005 and 2006, we recognized $137,000, $164,000 and $186,000 of stock-based compensation expense, respectively, for stock options granted to non-employees. For certain stock option grants, we made modifications to the option terms. These modifications included extension of the vesting period and acceleration of vesting. During the years ended June 30, 2004, 2005 and 2006, we recognized $0, $631,000 and $112,000 of stock-based compensation expense, respectively, for modifications of stock options granted.

Quantitative and Qualitative Disclosures About Market Risk

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

For direct sales outside the United States it is likely we will sell in the local currency. For the year ended June 30, 2006, all of our executed sales contracts were denominated in U.S. dollars, with the exception of four sales contracts denominated in Euros. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. Some of our commissions related to sales of the CyberKnife system are payable in Euros. To the extent that management can predict the timing of payments under these contracts, we may engage in hedging transactions to mitigate such risks.

From time to time, we invest our excess cash primarily in money market funds, U.S. government securities, corporate bonds and commercial paper. Accordingly, we believe that while the instruments we hold are subject to changes in the financial standing of the issuer of such securities, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments.

Recent Accounting Pronouncements

In May 2005, the Financial Accounting Standards Board, or FASB, issued SFAS No. 154, *Accounting Changes and Error Corrections*, or SFAS 154. SFAS 154 replaces Accounting Principles Board, or APB, Opinion No. 20, or APB 20, and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*, and applies to all voluntary changes in accounting principle, and changes the requirements for accounting for and reporting of a change in accounting principle. APB 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of change a cumulative effect of changing to the new accounting principle whereas SFAS 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. SFAS 154 enhances the consistency of financial information between periods. SFAS 154 will be effective in fiscal years beginning after December 15, 2005. Early adoption is permitted. We do not expect that the adoption of SFAS 154 will have a material impact on its results of operations or financial position.

In December 2004, the FASB issued a Statement, *Share-Based Payment, an amendment of FASB Statements Nos. 123 and 95*, or SFAS 123R, that addresses the accounting for share-based payment transactions in which a company receives employee services in exchange for either equity instruments of the company or liabilities that are based on the fair value of the company's equity instruments or that may be settled by the issuance of such equity instruments. The statement eliminates the ability to account for share-based compensation transactions using the intrinsic value method and generally requires that such transactions be accounted for using a fair-value-based method and recognized as expense in the consolidated statements of operations. This new standard will be effective for us beginning with our fiscal year ending June 30, 2007.

We plan to adopt SFAS 123R using the modified prospective method, under which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted or modified after the effective date and (b) based on the previous requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The amounts disclosed within our footnotes are not necessarily indicative of the amounts that will be expensed upon the adoption of SFAS 123R. Compensation expense calculated under SFAS 123R may differ from the amounts currently disclosed within our footnotes based on changes in the fair value of our common stock, changes in the number of options granted or the terms of such options, the treatment of tax benefits and changes in interest rates or other factors. Upon adoption of SFAS 123R, we plan to use the Black-Scholes model to value the compensation expense associated with employee stock options and stock purchases under our employee stock purchase plan.

We expect this standard will not have a significant impact on the consolidated statements of operations and consolidated statements of cash flows. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as cash flow from financing activities, rather than as cash flow from operations as required under SFAS 123. This requirement will reduce net cash flows from operations and increase net cash flows from financing activities in periods after adoption to the extent that such excess tax benefits are realized.

In March 2005, the SEC issued Staff Accounting Bulletin, or SAB, No. 107, regarding the Staff's interpretation of SFAS 123R. This interpretation provides the Staff's views regarding interactions between SFAS 123R and certain SEC rules and regulations and provides interpretations of the valuation of share-based payments for public companies. The interpretive guidance is intended to assist companies in applying the provisions of SFAS 123R and investors and users of the financial statements in analyzing the information provided. We will follow the guidance prescribed in SAB 107 in connection with our adoption of SFAS 123R.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. This interpretation clarifies the accounting for uncertainty in income taxes recognized in the financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. FIN 48 is effective for fiscal years beginning after December 15, 2006. We have not yet determined what impact the adoption of this standard will have on our consolidated financial statements.

BUSINESS

Overview

We have developed the first and only commercially available intelligent robotic radiosurgery system, the CyberKnife system, designed to treat solid tumors anywhere in the body as an alternative to traditional surgery. For over 30 years, traditional radiosurgery systems, or systems that deliver precise, high dose radiation directly to a tumor, have been used primarily to destroy brain tumors. Our CyberKnife system represents the next generation of radiosurgery systems, combining continuous image-guidance technology with a compact linear accelerator that has the flexibility to move in three dimensions according to the treatment plan. This combination, which we refer to as intelligent robotics, extends the benefits of radiosurgery to the treatment of tumors anywhere in the body. The CyberKnife system autonomously tracks, detects and corrects for tumor and patient movement in real-time during the procedure, enabling delivery of precise, high dose radiation typically with sub-millimeter accuracy. Traditional radiosurgery systems have limited mobility and generally require the use of rigid frames, restricting the ability to effectively treat tumors outside of the brain. The CyberKnife system does not have these limitations and therefore has increased flexibility to treat tumors throughout the body from many different directions, while minimizing the delivery of radiation to healthy tissue and vital organs. The CyberKnife procedure requires no anesthesia, can be performed on an outpatient basis and allows for the treatment of patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. In addition, the CyberKnife procedure avoids many of the potential risks and complications that are associated with other treatment options and is more cost effective than traditional surgery.

The CyberKnife system has received U.S. Food and Drug Administration, or FDA, 510(k) clearance to provide treatment planning and image-guided robotic radiosurgery for tumors anywhere in the body where radiation treatment is indicated. The CyberKnife system has also received a CE mark for sale in Europe and has been approved for various indications in Japan, Korea, Taiwan, China and other countries. As of September 30, 2006, 83 CyberKnife systems were installed and are in use: 52 in the United States, 10 of which are pursuant to our shared ownership programs, 24 in Asia and 7 in Europe. In addition, as of September 30, 2006, we had 78 CyberKnife systems pending installation, 12 of which will be placed with our customers pursuant to our shared ownership programs. We estimate that over 20,000 patients worldwide have been treated with the CyberKnife system since its commercial introduction. Our customers have increasingly used the CyberKnife system for indications outside of the brain for tumors on or near the spine and in the lung, liver, prostate and pancreas. Based on customer data, more than 50% of patients treated with the CyberKnife system in the United States during the three months ended September 30, 2006 were treated for tumors outside of the brain.

Cancer Market Overview

According to the World Health Organization, or WHO, an estimated 7.6 million people died of cancer in 2005, accounting for 13% of all deaths worldwide. The WHO estimates that there are 24.6 million people living with cancer worldwide, with approximately 10.9 million new cases being diagnosed every year. Cancer is the second leading cause of death in the United States, after heart disease. The American Cancer Society, or ACS, estimates that approximately 564,000 Americans will die as a result of cancer in 2006. The ACS also estimates that approximately 1.4 million new cases of cancer will be diagnosed in the United States in 2006, with continued increases in the prevalence of cancer forecasted as the U.S. population ages. The National Institutes of Health estimates that the treatment of cancer accounted for more than $74.0 billion in direct medical costs in 2005.

Cancers can be divided broadly 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 ACS estimates that solid

tumor cancers will account for approximately 1.3 million, or approximately 92%, of new cancer cases diagnosed and will account for approximately 500,000 cancer-related deaths in the United States in 2006. In addition, cancers that initially appear in one region of the body as a primary tumor, such as in the breast or prostate, even when diagnosed and treated, can lead to the development of tumors in other locations of the body, or secondary tumors. This is referred to as metastatic disease.

Traditional Treatments

Traditional methods for the treatment of solid tumor cancers include surgery, radiation therapy, chemotherapy and other drugs. Surgery and radiation are forms of local control, because the tumor is either directly removed through surgery or irradiated with the objective of destroying the cancer cells comprising the tumor. Chemotherapy is a systemic treatment method which involves the administration of drugs with the objective of killing cancer cells anywhere in the body, including any remaining cancer cells that were not destroyed by local treatment.

Surgical Removal of Tumors

A common treatment approach, if applicable to the patient and tumor type, is the removal of the tumor through surgery, with follow-up radiation therapy to kill any remaining cancer cells in the area surrounding the tumor. Surgery is especially appropriate for certain types of cancer, such as breast cancer, where tumors are often well-defined and surgically accessible. However, many types of solid tumors, including those affecting the brain, the spine, the lungs and various other organs, present significant challenges to a traditional surgical approach. In many instances, these tumors occur in hard to reach areas or lie within or in close proximity to critical organs. Accordingly, it may be difficult or impossible to surgically access or remove the entire tumor or organ affected. For example, many tumors located near the base of the skull are difficult to treat with traditional surgery without substantial risk of injury to the visual pathways or other critical brain regions.

Traditional surgery is highly invasive, painful and involves significant operative and post-operative risks, including risks associated with anesthesia, infection and other complications. For example, surgery is very difficult to perform on lung tumors because incisions in the sternum are often required to access the lung and because the lung is in motion due to respiration. Lung surgery also entails significant risks of post-surgical complications, including severe bleeding and pneumonia. Traditional surgery also entails significant costs and recovery times, particularly for more complex and difficult surgeries. In addition, for elderly or seriously ill patients, surgery is not typically an alternative, even if the tumor were otherwise operable.

Over the past several years, minimally invasive surgical techniques including cryotherapy, radiofrequency ablation and ethanol injections have been developed to ablate tumors; however, these techniques have significant limitations. Cancer cells may not be fully ablated or destroyed and the energy source used in the procedure may damage adjoining healthy tissue or organs. In addition, these techniques are currently only available for a limited range of cancer indications. As a result, these techniques remain in limited use.

Radiation Therapy

Radiation therapy has been used for several decades to treat the area around a tumor site, typically as an adjunct to surgery after the tumor has been removed, in an attempt to eliminate remaining cancer cells in that area. Radiation therapy is also used to directly target the tumor in certain instances when surgery is not possible. The goal of radiation therapy is to eliminate all cancer cells in an intended treatment region. However, healthy tissue outside of the intended treatment region also receives substantial radiation. In order to minimize the damage to healthy tissue surrounding the tumor area, a large number of fractions, or staged treatments, are administered daily over multiple

weeks. Despite the use of fractionated treatments, radiation therapy can still damage healthy tissue in the treated region, particularly since treatment delivery is relatively imprecise. Besides the potential damage to healthy tissue, radiation therapy may have a number of other adverse side effects including nausea and skin reactions. The nature and severity of these side effects can vary significantly depending on the area of the body treated and on the patient.

Improvements in radiation therapy. Recent advances in radiation therapy have focused on improving the shaping and targeting of the radiation beams to minimize irradiation of healthy tissue. These advances include the development of Intensity Modulated Radiation Therapy, or IMRT, which is designed to improve conformality of the beam to the shape of the tumor, and Image-Guided Radiation Therapy, or IGRT, which is designed to improve targeting accuracy. However, the majority of these treatments are delivered using gantry-based linear accelerator systems that rotate the radiation source on a single axis and therefore have a limited range of motion, which restricts treatment delivery options and generally requires manual repositioning of the patient during treatment. In addition, IMRT and IGRT have a limited ability to accurately target tumors, to conform to tumor shape, and to detect and compensate for tumor and patient motion during treatment. This results in having a cumulative radiation dose pattern for IMRT and IGRT treatments which generally includes not only the tumor, but also surrounding healthy tissue.

Development of Radiosurgery

Based on the demonstrated principles of radiation as a method of destroying cancer cells, manufacturers have developed radiosurgery systems that have initially shown to be effective in the treatment of brain tumors and there have been various attempts to develop similarly accurate systems to perform radiosurgery elsewhere in the body. By destroying the tumor with a high dose of radiation, radiosurgery systems have been shown to be effective at local control without the risks, costs and other limitations of traditional surgery. Radiosurgery systems differ from traditional radiation therapy systems in that they are designed to deliver a very high cumulative dose of radiation, in a single or small number of treatments specifically targeted at the tumor rather than at a region surrounding the tumor area. The delivery of more accurate radiation allows higher doses to be delivered, increasing the probability of tumor cell death and better local control. In addition, radiosurgery can be used on patients who cannot, due to advanced age or other health reasons, tolerate traditional surgery.

Frame-based radiosurgery. One of the initial radiosurgery techniques was frame-based radiosurgery for the treatment of brain tumors. This procedure begins by attaching a rigid metal frame, known as a stereotactic frame, to the patient's head by screwing it into the skull through the skin. Besides immobilizing the patient, the frame forms a fixed coordinate system that is used to target a tumor inside the head. Once the frame is attached, the physician then images the head, typically with a computed tomography, or CT, scan, to identify the tumor location relative to the frame. The physician then uses the acquired images to develop a treatment plan, and the patient receives treatment. The entire process usually lasts between four and eight hours.

Although frame-based radiosurgery represents an advancement in cancer treatment, it has significant shortcomings. The necessity for a stereotactic frame to be screwed onto a patient's skull or affixed to the body restricts the area of the body which can be treated. In addition, frame-based radiosurgery systems do not generally succeed in conforming the radiation dose to the tumor, because beam orientations are limited, and therefore it is difficult to match the shape of the treated volume with the shape of the tumors. Further, because it is difficult to precisely reposition the head frame for multiple treatments, these systems are very rarely used when more than one dose of radiation is required. Frame-based radiosurgery approaches have been used for treatment of tumors in other parts of the body, but suffer from significant drawbacks. In particular, it is not practical to attach a frame rigidly to parts of the body other than the head. Tumors in soft tissue organs such as the lung, liver, pancreas and prostate are not rigidly fixed to any external reference points and can move significantly

during treatment due to normal bodily functions. Frame-based approaches to delivering radiosurgery for tumors in such locations are rarely as accurate as frame-based systems used to treat brain tumors. This lack of accuracy for tumors located outside the head may compromise the efficacy of traditional radiosurgery and increase the likelihood of delivering significant radiation doses to otherwise healthy tissue.

The CyberKnife System Solution

We have developed and commercialized the CyberKnife system, an intelligent robotic radiosurgery system designed to treat solid tumors throughout the body where radiation is indicated as an alternative to traditional surgery. The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator mounted on a computer-controlled manipulator arm to precisely deliver high doses of radiation to a tumor from many different directions. Our system tracks, detects and corrects for tumor and patient movement in real-time during treatment and precisely delivers high doses of radiation to a tumor typically with sub-millimeter accuracy. Key benefits of the CyberKnife system include:

Treatment of inoperable or surgically complex tumors. The CyberKnife system can 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 system's intelligent robotics are designed to enable the delivery of radiation doses that conform closely to the shape of the tumor. This enables the precise targeting of a tumor, while at the same time minimizing damage to surrounding healthy tissue. Treatments performed with the CyberKnife system can also be staged over two to five treatment sessions.

Treatment of tumors throughout the body. The CyberKnife system has been cleared by the FDA to provide treatment planning and image-guided radiosurgery for tumors anywhere in the body where radiation treatment is indicated. Unlike frame-based radiosurgery systems, which are generally limited to treating brain tumors, the CyberKnife system 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 and pancreas.

Real-time tracking of tumor movement. We believe the CyberKnife system is the first device that is designed to enable the treatment of tumors that may change position due to tumor and patient movement during treatment with a level of accuracy associated with radiosurgery procedures for brain tumors. In addition, our Synchrony motion tracking system enables highly accurate treatment of tumors that move with respiration.

Significant patient benefits. Patients may be treated with the CyberKnife system on an outpatient basis without anesthesia and without the risks and complications inherent in traditional surgery. The CyberKnife procedure is well tolerated. Patients do not require substantial pre-treatment preparation, and typically there is little to no recovery time or hospital stay associated with the CyberKnife procedure. In addition, the CyberKnife system eliminates the need for an invasive stereotactic frame to be screwed onto the patient's skull or affixed to other parts of the body.

Facilitates additional revenue generation through increased patient volumes. We believe that the CyberKnife system allows our customers to effectively treat patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. Therefore, we believe the treatment of these patients generates additional revenue without affecting our customers' traditional radiation therapy practices. In addition, because the CyberKnife treatment is a non-invasive, outpatient procedure requiring little or no recovery time, hospitals can treat more patients than through traditional surgery. In traditional surgery, the time a patient must be at the facility for the procedure and the recovery time tend to be measured in days. With the CyberKnife system, the entire

procedure is generally completed within 90 minutes, and the patient often leaves the facility very shortly after treatment. Even if the patient receives four to five treatments, the total time the patient is at the hospital or treatment center is still shorter than with traditional surgery. Furthermore, the additional time the patient must be at the hospital, the more resources the hospital must dedicate to the patient. The reduction in overall time and resources required for the CyberKnife procedure, when compared to traditional surgery, leads to an increase in the volume of procedures performed and lower per procedure costs for the hospital. The combination of incremental revenue generation and lower per procedure cost makes the CyberKnife system an attractive addition to our customers' cancer treatment practice.

Upgradeable modular design. Our CyberKnife system has a modular design which facilitates the implementation of upgrades without requiring our customers to purchase an entirely new system. We have a well-established track record of developing and delivering state-of-the-art upgrades to our customers, enabling our customers to take advantage of the continued evolution of our CyberKnife system. We continue to develop and offer new clinical capabilities enhancing ease of use, reducing treatment times, improving accuracy and improving patient access.

Our Strategy

Our goal is to have the CyberKnife system become the standard of care for the treatment of solid tumors, particularly those that are difficult to treat with traditional surgery. We believe our technology can significantly enhance the applications of radiosurgery by increasing the number and type of tumors which can be treated effectively. 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 CyberKnife system and demonstrate its advantages over traditional treatment methods. We intend to increase the number of worldwide sales and marketing personnel in order to increase sales and drive utilization of the CyberKnife system. In addition, we will continue to hold and sponsor symposia and educational meetings and to support clinical studies in an effort to demonstrate the clinical benefits of the CyberKnife system. Finally, we will continue to assist our customers in increasing patient awareness in their communities by helping them develop marketing and educational campaigns.

Continue to expand the radiosurgery market. While radiosurgery has traditionally been used to treat brain tumors, the CyberKnife system has received FDA clearance for and is increasingly being used to treat tumors anywhere in the body where radiation is indicated. Based on customer data, more than 50% of patients treated with the CyberKnife system in the United States during the three months ended September 30, 2006 were treated for tumors outside of the brain. We are facilitating studies to further demonstrate the CyberKnife system's efficacy for treating tumors outside of the brain, and we believe these studies will increase overall utilization of the CyberKnife system and continue to expand the number of patients eligible for radiosurgery. In addition, we are continuing to develop new upgrades to enable the CyberKnife system to be even better suited for treating tumors anywhere in the body where radiation is indicated.

Continue to innovate through clinical development and collaboration. The clinical success of the CyberKnife system is due in large part to 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 CyberKnife system users to learn what is needed to enhance the technology. Due to this collaborative process, we continually refine and upgrade the CyberKnife system, which ultimately improves our competitive position in the radiosurgery market. Our upgrades are designed to improve the ease of use and accuracy of treatment, decrease the treatment times, and improve the utilization for specific types of tumors. For example, in recent years, we introduced Synchrony, a motion tracking system that is designed to track tumors that move with patient respiration and the Xsight Spine

Tracking System, a new target tracking technology, which eliminates the need for surgical implantation of small, inert metal markers, known as fiducials, in the treatment of spinal tumors. In 2006, we introduced the Patient Archive and Restore System, the RoboCouch patient positioning system, the Xsight Lung Tracking System and the Xchange robotic collimator changer. We also maintain close relationships with our customers through our shared ownership programs and service plans. This further enables us to understand their needs and allows us to develop new technologies and upgrades that improve and expand clinical applications and drive increased utilization of our CyberKnife system.

Leverage our installed base to generate additional recurring revenue. We have designed the CyberKnife system so that customers may upgrade their previously purchased systems as we introduce new features. We generate additional revenue by selling multiyear service plans that provide eligibility to receive upgrades, when and if available. These contracts are typically signed at the time of CyberKnife system purchase and generate additional revenue throughout the life of the contract. In addition, we sell upgrades to our existing customers who are not covered by service plans or who have exhausted the upgrades deliverable pursuant to their service plans. Finally, we offer shared ownership programs, which enable customers to reduce the upfront investment required for the CyberKnife system in exchange for sharing a significant portion of revenue with us that is derived from each procedure.

Continue to expand international sales and geographic reach. We intend to increase our sales and distribution capabilities outside of the United States to take advantage of the large international opportunity for our products. We currently have regional offices in Paris, France and Hong Kong, China, and our sales and distribution channels cover more than 30 countries. We intend to increase our international revenue by increasing the number of distributors and direct sales and support personnel in targeted new international markets, and by further penetrating our established international markets.

Pursue acquisitions, strategic partnerships and joint ventures. We intend to actively pursue acquisitions, strategic partnerships and joint ventures that we believe may allow us to complement our growth strategy, increase market share in our current markets and expand into adjacent markets, broaden our technology and intellectual property and strengthen our relationships with our customers.

The CyberKnife System

Our principal product is the CyberKnife system, an intelligent robotic radiosurgery system that enables the treatment of tumors anywhere in the body where radiation is indicated without the need for invasive surgery or stereotactic frames. The current list price for the CyberKnife system is approximately $4.1 million, which includes initial training, installation and a one-year warranty. We also offer optional hardware and software, technical enhancements and upgrades to the CyberKnife system, as well as service contracts and training to assist customers in realizing the full benefits of the CyberKnife system. As of September 30, 2006, we had 83 units installed at customer sites: 52 in the United States, 10 of which are pursuant to our shared ownership programs, 24 in Asia and 7 in Europe. In addition as of September 30, 2006, we had 78 CyberKnife systems pending installation, 12 of which will be placed pursuant to our shared ownership programs.

The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator mounted on a computer-controlled manipulator arm to precisely deliver high doses of radiation to the tumor from numerous directions during treatment. Our patented image-guidance technology correlates low dose, real-time treatment X-rays with previously taken CT images of the tumor and surrounding tissue to precisely direct each beam of radiation. This 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 system gives clinicians an effective, uninterrupted and accurate treatment alternative.

Key components and technologies of the CyberKnife system include the following:

Compact X-band linear accelerator. This compact linac generates the radiation that destroys the tumor. We believe we are the only commercial manufacturer of a compact X-band linac. This technology allows us to manufacture linacs that are smaller and weigh significantly less than standard medical linacs used in radiation therapy while achieving similar performance. Our linac can provide high energy X-ray beams of different diameters and intensities without the use of radioactive material.

Robotic manipulator. The manipulator arm, with six-degrees-of-freedom range of movement, is designed to move and direct the linac with an extremely high level of precision and repeatability. The manipulator arm allows doses of radiation to be delivered from nearly any direction and position, without the limitations of gantry-based systems, creating a non-isocentric composite dose pattern that can precisely conform 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 dose toxicity. Furthermore, the rapid response time of the manipulator arm allows tracking of tumors that move with respiration in real-time.

Real-time image-guidance system with continuous target tracking and feedback. Without the need for clinician intervention or treatment interruption, the CyberKnife system's revolutionary real-time image-guided robotics enables the CyberKnife system to continuously monitor and correct for patient and tumor movements throughout treatment. The CyberKnife system is able to provide the precise delivery of radiation because of the virtually instantaneous and continuous feedback loop between X-ray-based target localization and automatic correction of the radiation beam throughout the entire treatment. This target tracking and feedback technology uses two digital image detectors to capture low energy X-ray images. The image guidance software carries out an automated comparison of the X-ray images with the patient's CT scan to detect, track and correct for any movement of the tumor or patient before and during the treatment delivery. This allows the CyberKnife system to dynamically target the tumor and adjust the position of the beam to follow the motion of the tumor throughout the treatment, directing the beam to precisely match tumor movement.

X-ray sources. The low-energy X-ray sources generate orthogonal X-ray images to determine the location of bony landmarks or implanted fiducials throughout the entire treatment.

Image detectors. The image detectors capture high-resolution anatomical images throughout the treatment. These live images are continually compared to previously captured digitally reconstructed radiographs to determine real-time patient positioning. Based on this information, the robotic manipulator instantly corrects for any detected movement. In October 2005, we introduced larger, in-floor X-ray image detectors, which provide greater treatment access.

In addition to the key components listed above, we also offer the following components and features, several of which have been introduced as upgrades since 2004, including:

Synchrony respiratory tracking system. The CyberKnife system employs a proprietary motion tracking system called Synchrony, for targeting tumors that move during respiration. Synchrony software and hardware correlate tumor movement due to respiration with the CyberKnife system treatment beam allowing it to continuously track the tumor as it moves throughout the respiratory cycle. Through this process the CyberKnife system delivers beams synchronized in real-time to tumor position while adapting to changes in breathing patterns, allowing for the delivery of highly conformal radiation with reduced treatment margins and unprecedented clinical accuracy of approximately 1.5 millimeters.

Xsight Spine Tracking System. For most extracranial tumors, the CyberKnife system uses implanted fiducials to track the position of the tumor throughout treatment. However, the Xsight Spine Tracking System eliminates the need for surgical implantation of fiducials in the delivery of radiosurgery treatments on or near the spine. The Xsight Spine Tracking System utilizes skeletal structures to

automatically locate and track tumors with sub-millimeter accuracy. We believe no other commercially available technology today offers this capability.

RoboCouch patient positioning system. Fully integrated with the CyberKnife system, the RoboCouch intelligently positions the patient to the planned treatment position with unprecedented accuracy, providing not only greater set up precision, but significantly streamlining the patient set up process. The versatility of the RoboCouch allows for automated patient positioning prior to treatment. Additionally, the RoboCouch offers greater positioning flexibility, a lower patient loading height, and a higher patient weight capacity limit when compared to our AXUM treatment couch.

Xsight Lung Tracking System. The Xsight Lung Tracking System delivers radiosurgical accuracy to some lung tumors without the need for implanted fiducials. The Xsight Lung Tracking System directly tracks the anatomy of the tumor. Integrated with the Synchrony Respiratory Tracking System, treatment margins are significantly minimized by tracking the motion of the tumor as it moves in respiration.

Xchange robotic collimator changer. The Xchange robotic collimator changer automatically exchanges secondary collimators, which determine the radiation beam size, during the treatment. The use of multiple collimators can enable faster treatments than the use of a single collimator.

In-Room CT System. The In-Room CT System enables diagnostic quality 3D and 4D patient imaging just prior to treatment. Combined with the RoboCouch patient positioning system, the In-Room CT System provides a smooth and efficient scan-to-treatment transition without having to re-enter the treatment room or manually move the patient.

4D Treatment Optimization and Planning System. Our 4D Treatment Optimization and Planning System optimizes treatment by taking into account the movement of the tumor as well as the movement and deformation of the surrounding tissue, thereby minimizing margins and radiation exposure to healthy tissue.

MultiPlan treatment planning system. Our proprietary intuitive planning system called MultiPlan is designed for radiosurgery and includes a standard computer workstation. MultiPlan calculates a treatment plan that produces a pattern of radiation designed to conform to the tumor. The MultiPlan system uses input images from multiple modalities, including computed tomography, or CT, magnetic resonance imaging, or MRI, positron emission tomography, or PET, and 3D angiography. After the physician outlines a tumor and critical adjacent tissues on the computer, a radiation scientist uses the MultiPlan system to plan the number, intensity, position and direction of radiation beams. Using unique and patented software algorithms, the system calculates and displays the resultant treatment plan for evaluation, optimization and approval by the physician.

Patient Archive and Restore System. The Patient Archive and Restore System increases utilization by moving the archive and restore processes from the treatment delivery workstation to an independent archiving system.

InView remote review system. The CyberKnife system employs a remote review workstation to allow referring physicians to participate in the treatment process, called InView. InView allows physicians to fuse and contour diagnostic images as well as review potential treatment plans as generated by MultiPlan prior to the CyberKnife procedure. By placing InView in physician offices or clinics, we believe that we can expand the number of patients referred for treatment using the CyberKnife system.

AXUM treatment couch. AXUM is a computer-controlled treatment couch integrated with the image- guidance system that automatically aligns the patient for treatment at the beginning of the procedure. AXUM moves the treatment couch to position the patient so that the tumor is in the center of the imaging field. When the tumor is correctly positioned, treatment begins and the CyberKnife system tracking software guides the radiation beams to the precise tumor location.

CyberKnife System Clinical Workflow

The CyberKnife procedure involves scanning, planning, treatment and follow-up, and may be performed on an outpatient basis.

Scanning. Prior to treatment with the CyberKnife system, the patient undergoes imaging procedures to determine the size, shape and location of the tumor. The process begins with a standard high-resolution CT scan. Preparation for the scan may also include the placement of fiducials, in or around the tumor when treating tumors outside the brain. For certain tumors, such as brain and spinal tumors, where greater differentiation between different types of soft tissue is required, other imaging techniques, such as MRI, angiography, or PET, may also be used to more accurately differentiate the tumor from surrounding healthy tissue. Our software helps integrate CT scans and other imaging data into the pre-treatment planning process.

Planning. Following the scanning, the image data is then digitally transferred to the CyberKnife system's treatment planning workstation, where the treating physician identifies the exact size, shape and location of the tumor to be targeted and the surrounding vital structures to be avoided. A qualified physician and/or radiation scientist or physicist then uses our proprietary software to generate a treatment plan to provide the desired radiation dose to the identified tumor location without exceeding the tolerance of adjacent healthy tissue. As part of the treatment plan, our proprietary planning software automatically determines the number, duration and angles of delivery of the radiation beams.

Treatment. During a CyberKnife procedure, a patient lies on the treatment table, which automatically positions the patient. Anesthesia is not required, as the procedure is painless and non-invasive. The treatment, which generally lasts between 30 and 90 minutes, typically involves the administration of between 100 and 200 radiation beams delivered from different directions, each lasting from 10 to 15 seconds. Prior to the delivery of each beam of radiation, the CyberKnife system has the ability to simultaneously take a pair of X-ray images and compare them to the original CT scan. This image guided approach continuously tracks, detects and corrects for any movement of the patient and tumor throughout the treatment to ensure precise targeting. The patient usually leaves the facility immediately upon completion of the procedure.

Follow-up. Follow-up imaging, generally with either CT or MRI, is usually performed in the weeks and months following the treatment to confirm the destruction and eventual elimination of the treated tumor.

Shared Ownership Programs and Other Services

We provide a variety of services to support the operation and use of our CyberKnife systems. We expect that these services will enable us to generate a recurring revenue stream that will continue to make up an important portion of our revenue.

CyberKnife System Shared Ownership Programs

We offer shared ownership programs under which we provide a CyberKnife system to a customer while retaining ownership of that system. In addition, we provide physician training, educational support, general reimbursement guidance and technical support, as well as possible future upgrades to customers under this program. In return, these customers are generally required to pay us the greater

of a minimum payment or a portion of the revenue generated through the use of the CyberKnife system. Generally, this minimum monthly payment is equivalent to the revenue generated from treating three to four patients per month, and any revenue received from additional patients is shared between us and the customer. Customers who participate in our shared ownership programs are responsible for costs associated with facility preparation and professional and administrative personnel required to operate the CyberKnife system. Our legacy shared ownership programs were known as our placement programs.

The shared ownership programs typically have a term of five years, during which the customer has the option to purchase the system at pre-determined prices. As of September 30, 2006, we had entered into 22 shared ownership programs, of which 10 are installed and 12 are pending installation.

Warranty and Support Services

We provide a one-year warranty on the purchase of the CyberKnife system. In addition, for a fee that is fixed at the time of purchase, customers can enroll in one of our multiyear service plans:

Diamond Elite multiyear service plan. Under our Diamond Elite multiyear service plan, or Diamond plan, our customers have the opportunity to acquire up to two unspecified future upgrades per year, when and if they become available. If we offer more than two upgrades a year, customers can exchange their right to receive future upgrades for the current upgrades available. The Diamond plan currently lists in the United States for $460,000 per year, and provides for annual renewals for four years.

Ruby multiyear service plan. Under our Ruby multiyear service plan, or Ruby plan, customers outside the United States have the opportunity to acquire up to two unspecified future software upgrades per year when and if they become available. The Ruby multiyear service plan currently lists for $380,000 per year and provides for annual renewals for four years.

Basic and Emerald multiyear service plans. We also offer a basic multiyear service plan, and our Emerald multiyear service plan, or Emerald plan, following the initial one-year warranty period. Under our Emerald plan, customers receive a higher level of support, including a faster response time and coverage for all replacement parts. The current annual prices of our basic and Emerald service plans are $220,000 and $275,000, respectively.

Legacy multiyear service plans. Prior to November 2005, we offered our Platinum multiyear service plan, or Platinum plan, to customers in the United States and our Gold Elite multiyear service plan, or Gold plan, to customers outside the United States. While these plans are no longer offered, as of September 30, 2006 we were still servicing approximately 29 customers pursuant to Platinum plans and approximately 16 customers through our distributors pursuant to Gold plans. These multiyear service plans typically provide for annual renewals for four years, including the one-year warranty period.

Under our Platinum plan, in addition to technical support, customers have the opportunity to acquire at least two future upgrades per year for a maximum of eight upgrades over the three or four year term of the arrangement, for an annual fee of approximately $425,000. If we do not offer at least two upgrades per year, the customer would be entitled to a refund of $100,000 for each upgrade not offered. To date no refunds have been required or are due pursuant to these multiyear service plans.

Under our Gold plan, customers typically have the opportunity to acquire up to two unspecified future software upgrades per year, for an annual fee of $350,000. If we do not offer an upgrade in any particular year, the customer would be entitled to a refund of $100,000 for each upgrade not offered, except in Japan. Pursuant to the Gold plan customers are required to pay for additional hardware if required for the implementation of new software features.

Installation and service. We perform the installation and service of the CyberKnife system in the United States and in selected countries outside the United States. In addition, we have trained third-party service organizations and trained our distributors in Korea and Italy to perform the CyberKnife system installation and service. We employ service engineers and technical staff with a high degree of expertise, which is required due to the complexity of the CyberKnife system. As of September 30, 2006, we had 65 engineers, technicians and support personnel in our installations, service and support group. We intend to increase the number of our installation and service personnel as our sales increase.

Training. In addition to the training we offer with the initial installation of the CyberKnife system and the training required when an upgrade is installed, we offer various training sessions for our customers or our distributors for an additional fee.

Sales and Marketing

We currently market the CyberKnife system through a direct sales force in the United States and a combination of direct sales personnel and distributors in the rest of the world. Support of our international sales is handled through our European and Asian headquarters in Paris, France and in Hong Kong, China. As of September 30, 2006, we had a total of 94 employees in our worldwide sales and marketing group compared to 50 as of June 30, 2005. We expect to continue to increase the number of sales and marketing personnel as we expand our business.

In the United States we use a combination of sales directors, sales specialists, customer account sales executives, product managers, account managers and training specialists. Sales directors and sales specialists are responsible for selling the CyberKnife system to hospitals and stand-alone treatment facilities. Customer account sales executives sell upgrade products to existing customers. Our product managers help market our current products and work with our engineering group to identify and develop upgrades and enhancements for the CyberKnife system. Our account managers are primarily responsible for supporting the CyberKnife systems with marketing and education after installation is completed. Our training specialists train radiation oncologists, surgeons, physicists and radiation therapists.

In addition to marketing to hospitals and stand-alone treatment facilities, we market to radiation oncologists, neurosurgeons, general surgeons, oncology specialists and other referring physicians. We will continue to increase our focus on marketing and education efforts to surgical specialists and oncologists responsible for treating tumors throughout the body. Our marketing activities also include efforts to inform and educate cancer patients about the benefits of the CyberKnife system.

According to the American Society for Therapeutic Radiology and Oncology, or ASTRO, as of 2004 there were approximately 2,010 hospitals and stand-alone treatment facilities in the United States providing radiation therapy services. There are a total of 5,756 hospitals in the United States registered with the American Hospital Organization as of 2004. Our sales and marketing strategy is to target the hospitals and treatment facilities currently providing radiation therapy services, however, in the future we believe that the CyberKnife system will be marketed to hospitals that do not have radiation therapy facilities. In addition, we believe that free-standing cancer centers present a future opportunity to market the CyberKnife system within the United States.

Manufacturing and Assembly

We purchase major components of the CyberKnife system, including the robotic manipulator, treatment table, magnetron, imaging cameras and computers, from outside suppliers. We manufacture certain other electronic and electrical subsystems, including the linac, at our Sunnyvale, California facility. We then assemble and integrate these components with our proprietary software for treatment planning and treatment delivery and perform essential testing prior to shipment to customer sites.

Approximately 50,000 square feet in our Sunnyvale facilities are presently dedicated to these manufacturing and assembly activities.

In January 2005, we acquired American Science and Engineering's, or AS&E, High Energy Systems, or HES, business for $8.4 million. This acquisition provided us with the sole ownership of the intellectual property associated with our X-band linac, trade secrets and know-how used in the manufacturing process and included the hiring of key technologists previously employed by AS&E. HES had been the sole source manufacturer of the linac used in the CyberKnife system.

Single source suppliers presently provide us with several components, including the magnetron, the treatment couches and the imaging plates. In most cases, if a supplier were 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. 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 CyberKnife systems, which could adversely affect our reputation and results of operations.

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 product systems and other technology where available and when appropriate. Our policy is to patent or in-license the technology, inventions and improvements that we consider important to the development of our business. In addition, we use license agreements to selectively convey rights to our intellectual property to others. We also rely on trade secrets, know-how and continuing innovation to develop and maintain our competitive position.

As of October 31, 2006, we hold 10 U.S. patents, 3 allowed U.S. patent applications, 56 pending U.S. patent applications, and are pursuing additional U.S. patent applications on additional key inventions to enhance our intellectual property rights. The first of our patents will expire in 2010 and currently the last of our patents will expire in 2026. As of October 31, 2006, we also hold 21 foreign patents, 14 pending published PCT application and 23 foreign patent applications which correspond to our issued U.S. patents and pending U.S. patent applications. We cannot be sure that any patents will issue from any of our pending patent applications, nor can we assure you that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology. An additional key component of our intellectual property is our proprietary software used in planning and delivering the CyberKnife system's therapeutic radiation dose. Through the HES acquisition, we acquired certain intellectual property rights for the compact linac used in current versions of the CyberKnife system.

In addition to our patents, we also rely upon trade secrets, know-how, trademarks, copyright protection and continuing technological and licensing opportunities to develop and maintain our competitive position. We require our employees, consultants and outside scientific collaborators to execute confidentiality and invention assignment agreements upon commencing employment or consulting relationships with us.

Patents may provide some degree of protection for our intellectual property. However, patent protection involves complex legal and factual determinations and is therefore uncertain. In addition, the laws governing patentability and the scope of patent coverage continue to evolve, particularly in the areas of technology of interest to us. As a result, we cannot assure you that patents will issue from any of our patent applications. The scope of any of our issued patents may not be sufficiently broad to offer meaningful protection. In addition, our issued patents or patents licensed to us may be successfully challenged, invalidated, circumvented or unenforceable so that our patent rights would not create an effective competitive barrier. Moreover, the laws of some foreign countries may not protect

our proprietary rights to the same extent as do the laws of the United States. In view of these factors, our intellectual property positions bear some degree of uncertainty.

We have also entered into licensing agreements with third parties relating to rights and technologies. On January 30, 1991, we entered into a Manufacturing License and Technology Transfer Agreement with Schonberg Radiation Corporation under which Schonberg granted us a perpetual exclusive license to use and manufacture products utilizing some of Schonberg's patent and other intellectual property rights relating to the design, engineering and manufacturing of the compact linacs that may be used in the CyberKnife system for medical applications.

In December 2004 and in connection with the HES acquisition, we entered into a license agreement with AS&E relating to the intellectual property we obtained from the HES acquisition. We granted AS&E an exclusive, worldwide, fully paid license for use of the purchased intellectual property in the national security and non-destructive testing markets, as well as a non-exclusive worldwide, fully paid license of the intellectual property for all uses other than (a) the national security and non-destructive testing markets and (b) medical use or applications. In addition, we received an exclusive, worldwide, fully paid license to any modifications, improvements, enhancements or new developments to the acquired intellectual property by AS&E which are limited to medical uses or applications. We recently began the development of a next-generation linac, using technology developed independently from the intellectual property we obtained from the HES acquisition. We are developing this technology for medical uses and applications and other markets, including national security and non-destructive testing. In October 2006, we received a letter from AS&E expressing concerns that we may be using the intellectual property obtained from the HES acquisition in a manner that breaches, or may intend to breach, our contractual obligations under the license agreement. While we do not believe our activities breach or violate the terms of the license agreement, we cannot assure you that AS&E will not assert that we are breaching our obligations under our license agreement with them.

On July 9, 1997, we entered into a license agreement with The Board of Trustees of the Leland Stanford Junior University for technology and patents to develop, manufacture, use and sell products utilizing feature matching image registration techniques for radiosurgery.

Although we are not currently a party to any legal proceedings relating to our intellectual property, in the future, third parties may file claims asserting that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert these claims against us or against the licensors of technology licensed to us, or whether those claims will harm our business. If we are forced to defend against these claims, whether they are with or without any merit, whether they are resolved in favor of or against us or our licensors, we may face costly litigation and diversion of management's attention and resources. As a result of these disputes, we may have to develop costly non-infringing technology, or enter into licensing agreements. These agreements, if necessary, may be unavailable on terms acceptable to us, if at all, which could seriously harm our business or financial condition.

Research and Development

Continued innovation is critical to our future success. Our current product development activities include projects expanding clinical applications in radiosurgery, driving product differentiation, and continually improving the CyberKnife system's capabilities. Some of our product upgrades include AXUM, Express, Synchrony, Xsight Spine Tracking System, InView, MultiPlan and RoboCouch. Research activities strive to enable new product development opportunities by developing new technologies and advancing areas of existing core technology such as a next generation linac.

The modular design of our products 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 CyberKnife 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 CyberKnife system and improve the speed and accuracy of treatment.

As of September 30, 2006, we had 96 employees in our research and development departments. Research and development expenses for the fiscal years ended June 30, 2004, 2005 and 2006 were $7.3 million, $11.7 million and $17.8 million, respectively. We plan to continue to increase our investment in research and development in future periods.

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 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, minimally invasive procedures, radiation therapy chemotherapy and other drugs are other means to treat cancer. Also, we compete directly with frame-based radiosurgery systems primarily from Elekta AB (publ), or Elekta, BrainLAB AG, and the Integra Radionics business of Integra Life Sciences Holding Corporation.

The market for standard linacs is dominated by three companies: Elekta, Siemens AG, or Siemens, and Varian Medical Systems, Inc., or Varian. In addition, a new entrant, TomoTherapy Incorporated, or TomoTherapy, recently introduced a radiation therapy product. The CyberKnife system does not perform radiotherapy and generally does not compete directly with standard medical linacs that perform traditional radiotherapy, although some manufacturers of standard accelerator systems, including Varian and Elekta, claim some radiosurgery capabilities by using their radiation therapy products with body and or head frame systems and image-guidance systems. In addition, many government, academic and business entities are investing substantial resources in research and development of cancer treatments, including surgical approaches, radiation treatment, drug treatment, 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 system and its 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 assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on:

- widespread awareness, acceptance and adoption by the radiation oncology and cancer therapy markets of our products;
- the discovery of new technologies that improve the effectiveness and productivity of the CyberKnife system radiosurgery process;

- product coverage and reimbursement from third-party payors, insurance companies and others;
- properly identifying customer needs and delivering new upgrades to address those needs;
- published studies supporting the efficacy and safety of the CyberKnife system;
- limiting the time required from proof of feasibility to routine production;
- limiting the timing and cost of regulatory approvals;
- 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 patent protection or our ability to otherwise develop proprietary products and processes;
- securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts; and
- obtaining any necessary United States or foreign marketing approvals or clearances.

Reimbursement

In the United States, healthcare providers generally rely on third-party payors, principally private insurers and governmental payors such as Medicare and Medicaid, to cover and reimburse all or part of the cost of a medical procedure performed with a medical device. Our ability to commercialize our products successfully depends in significant part on the extent to which appropriate coverage and reimbursement for our products and related procedures are obtained from third-party payors. We cannot assure you that government or private third-party payors will cover and reimburse the procedures using our technology in whole or in part in the future or that payment rates will be adequate.

Medicare coverage and reimbursement policies are particularly significant to our business. Not only is Medicare the single largest third-party payor, but many other governmental and commercial payors follow its coverage and reimbursement policies. The Medicare coverage and reimbursement policies are developed by the Centers for Medicare and Medicaid Services, or CMS, the federal agency responsible for administering the Medicare program and its contractors. Medicare reimbursement rates for the same or similar procedures vary due to geographic location, nature of the facility in which the procedure is performed (e.g., teaching or community hospital) and other factors.

Medicare coverage for procedures using our technology currently exists in the hospital outpatient setting and in the free-standing clinic setting. For hospital outpatient procedures, where currently the vast majority of procedures using our CyberKnife system are performed, Medicare payments generally are made under a prospective payment system, which is based on the Ambulatory Payment Classifications, or APCs, under which procedures are categorized.

CMS assigns procedures that are comparable clinically and in terms of resources to the same APC. Hospitals are paid the applicable APC payment rate for the outpatient procedure, regardless of the actual cost for such treatment. CMS will frequently categorize a procedure or service in a new technology APC where the procedure does not have sufficient claims data to be placed in an existing APC that is appropriate in terms of clinical characteristics and resource costs. Once CMS has collected sufficient claims data on the procedure being paid under a new technology APC, the agency will assign the procedure to an existing APC group. Procedures generally are reimbursed under new technology APCs for two to three years. Beginning in 2004, both planning and treatment using our CyberKnife

system were assigned to new technology APCs. Medicare accomplished this through certain temporary billing codes: Healthcare Common Procedure Coding System, or HCPCS, code G0338 ("Linear- accelerator-based stereotactic radiosurgery planning"), HCPCS code G0339 ("Image-guided robotic linear accelerator-based stereotactic radiosurgery, complete course of therapy in one session, or first session of fractionated treatment") for the first or single treatment, and HCPCS code G0340 ("Image-guided robotic linear accelerator-based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesions, per session, second through fifth sessions, maximum five sessions per course of treatment") for any subsequent treatments.

For 2006, CMS determined that planning for stereotactic radiosurgery procedures using our technology should be reported using several Category I Current Procedure Terminology, or CPT, codes. The CPT planning codes are assigned to clinical APCs with payment levels that resulted in a slight increase in payment in 2006 and 2007 as compared to prior years.

For 2004 to 2006, placement of HCPCS codes G0339 and G0340 in the new technology APCs resulted in a national payment rate of $5,250 for the first treatment and $3,750 for each treatment thereafter, up to a maximum of five treatments. For the 2007 calendar year, CMS has determined that procedures performed in the hospital outpatient department using our technology be transitioned from the new technology APCs to two clinical APCs. Under the finalized payment rules, the national payment rate for procedures billed using HCPCS code G0339 will be paid $3,896, and procedures billed under HCPCS code G0340 will be paid $2,645. These changes in APC assignment result in a decrease in payment as compared to previous years and could have a material adverse impact on our sales and utilization of our technology.

Medicare payment to free-standing clinics generally is based on the physician fee schedule. There are no national payment rates for HCPCS codes G0339 and G0340, and Medicare contractors determine the payment rates for their jurisdiction. We understand that some Medicare contractors may require the use of other billing codes for the procedures.

In addition to Medicare reimbursement to hospitals and clinics, physicians receive reimbursement for their professional services in the hospital outpatient setting and the free-standing clinic setting. Payment is based on the physician fee schedule, and payment amounts are updated on an annual basis. Beginning 2007, CMS changed how it determines payment levels under the physician fee schedule. Specifically, CMS revised the methodology for calculating the physician work component, which reflects physician time and intensity of effort in performing a procedure or service. The CMS also changed its methodology for calculating the practice expense component, which reflects the overhead expenses that a physician incurs, such as rent, equipment and salaries. With these changes, we expect a slight change in reimbursement for physician professional services performed in connection with the CyberKnife procedure. At this time, we cannot predict the full impact of these changes on the Company's operations.

We also cannot assure you that Medicare will continue to cover and reimburse the procedures using the CyberKnife system, or that the amounts reimbursed under applicable codes will be adequate. While private third-party payors frequently follow Medicare coverage, coding and payment determinations, we cannot assure you that these payors will adopt coverage and reimbursement policies similar to those established by Medicare or whether they will cover and reimburse the procedures using CyberKnife systems in whole or in part. In the United States, we believe that a majority of private healthcare payors provide coverage for CyberKnife procedures under negotiated contracts with hospitals and clinics.

Effective January 1, 2007, the American Medical Association, or AMA, has established four new Category I CPT codes relating to stereotactic radiosurgery, scheduled to become effective January 1, 2007. Third-party payors may decide to use three of these codes to describe treatment (CPT codes 77372 and 77373) and treatment management (CPT code 77435) using our technology. CMS has

announced that these codes would not be used for our technology for Medicare payments for hospital outpatient services under the prospective payment system in 2007. These codes were assigned values for payments under the Medicare physician fee schedule for 2007 and may be required by Medicare contractors for use in other settings. At this time, the extent to which any of these codes would be required by Medicare contractors for services using our technology and performed in free-standing clinics or by other third-party payors is unclear. It is also unclear at this time whether the new codes will coexist with or replace the existing codes for treatment using our technology (HCPCS codes G0339 and G0340) and how the level of reimbursement would be impacted by the new codes. If the new codes are required by Medicare contractors for 2007, the reimbursement rates under the 2007 Medicare physician fee schedule could result in a material adverse effect on our business.

The current emphasis on cost-containment by third-party payors makes it exceedingly difficult for new medical devices and surgical procedures to obtain adequate coverage and reimbursement. Often, it is necessary to convince these payors that the new devices or procedures will establish an overall cost savings compared to currently reimbursed devices and procedures. We believe that the CyberKnife system may offer an opportunity for payors to reduce the cost of treatment for solid tumors as compared with surgical removal; however, we cannot assure you that payors will agree that these advantages exist or that payors will make reimbursement decisions based upon any such advantages. Hospitals would be less likely to purchase our products if they do not receive sufficient levels of reimbursement. In addition, if physicians or hospital administrators believe that our system will add cost to a procedure but will not add sufficient offsetting economic or clinical benefits, physician adoption could be impaired. Any reduction or limitation in use of our products could cause our sales to suffer.

Reimbursement by third-party payors is often positively influenced by the existence of peer-reviewed publications of long-term safety and efficacy data. We have collected and published data on clinical results for patients that have undergone surgical procedures involving use of the CyberKnife system, although we do not yet have long-term safety and efficacy data for a significant patient population size. We cannot assure you that our products will continue to be covered and reimbursed without publication of additional data, including data supporting long-term safety and efficacy of the CyberKnife system.

We have hired a director of reimbursement and have established a dedicated reimbursement group that seeks to provide education to physicians and facilities in working with payors on coverage and reimbursement issues for procedures involving the use of the CyberKnife system. This group assists our customers in obtaining pre-approval from third-party payors for patients who will be undergoing treatment using the CyberKnife system, and provides our customers with copies of relevant coverage, coding and payment policies, including those of the Medicare program, as well as published literature and clinical data supporting clinical safety and efficacy in the device.

To further support adequate coverage and reimbursement, a group of customers has formally organized into a non-profit organization to pursue adequate reimbursement, coverage and payment of our product worldwide, with a strong emphasis on the United States. This group, the CyberKnife Coalition, has a charter to promote patient access to CyberKnife system technology and treatment, and realize adequate coverage and reimbursement to support that treatment. The Coalition seeks to assure and advocate that procedures using the CyberKnife system continue to be reimbursed at appropriate levels by Medicare and other third-party payors.

Internationally, reimbursement and healthcare payment systems vary substantially 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. Our ability to achieve market acceptance or significant sales volume in international markets we enter will be dependent in large part on the availability of reimbursement for procedures performed using our products under health care payment

systems in such markets. To date, healthcare providers in Europe have been able to successfully negotiate coverage contracts with their local payors at adequate payment rates.

Regulatory Matters

Domestic Regulation

Our products and software are medical devices subject to regulation by the U.S. Food and Drug Administration, or FDA, as well as other regulatory bodies. FDA regulations govern the following activities that we perform and will continue to perform to ensure that 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;
- acceptance controls;
- product testing;
- product manufacturing;
- product safety;
- product labeling;
- product storage;
- recordkeeping;
- 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 prior 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. This process is generally 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) device, are placed in class III, requiring pre-market approval. All of our current products are class II devices.

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 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, or PMA. By regulation, the FDA is required to clear or deny a 510(k) pre-market notification within 90 days of submission of the application. As a practical matter, clearance may take longer. The FDA may require further information, including clinical data, to make a determination regarding substantial equivalence.

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.

Pre-market approval (PMA) pathway. A PMA must be submitted to the FDA if the device cannot be cleared through the 510(k) process. A PMA must be supported by extensive data, including but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to the FDA's satisfaction the safety and effectiveness of the device. No device that we have developed has required pre-market approval, nor do we currently expect that any future device or indication will require pre-market approval.

Product modifications. After a device receives 510(k) clearance or a PMA, 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. We have modified aspects of our CyberKnife system family of products 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 for the modifications. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with our determination not to seek a new 510(k) clearance or PMA, the FDA may retroactively require us to seek 510(k) clearance or pre-market approval. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k) clearance or pre-market approval is obtained. Also, in these circumstances, we may be subject to significant regulatory fines or penalties. From January 1, 2003 to September 30, 2006, we submitted an additional seven 510(k) clearances notifications for modifications made to the operation of the CyberKnife system. These applications were cleared by the FDA.

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

- Quality System Regulation, or QSR, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, 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. In the past, our prior facility has been inspected, and observations were noted. In May 2004 and April 2006, during routine inspections performed by the FDA, two minor observations were made in each inspection. We have taken corrective action on the minor observations in response to the FDA's observations. There were no observations that involved a material violation of regulatory requirements. We believe that 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 system contains 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 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. In the past, we failed to submit required reports to the FDA in a timely fashion. To correct our reporting deficiencies we initiated in 2003, a corrective action plan that included, among other things, filing all past due reports with the FDA, applicable state agencies, and customers. We have also developed and implemented procedures to ensure future reports are made in a timely manner. While we believe all past reporting deficiencies have been corrected, we cannot assure you that FDA will deem our corrective actions sufficient or that FDA will not initiate enforcement action against us.

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, or the 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 health care 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 fines of up to $50,000 and possible exclusion from participation in federal health care 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 Office of the Inspector General of the Department of Health and Human Services, or 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 health care 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 "prebates" 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 own our stock who also provide medical advisory and other consulting and personal services. Similarly, we have a variety of different types of arrangements with our customers. For example, our placement and shared ownership programs entail the provision of our CyberKnife system to our customers under a deferred payment program, where we generally receive the greater of a fixed minimum payment or a portion of the revenues of services. Included in the fee we charge for the placement and shared ownership programs are a variety of services, including

physician training, educational and marketing support, general reimbursement guidance and technical support, and, in the case of the placement program, certain services and upgrades are provided without additional charge based on procedure volume. In the past, we have also provided loans to our customers. We also provide research grants to customers to support customer studies related to, among other things, our CyberKnife systems.

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 whom 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.

Physician self-referral laws. We are also subject to federal and state physician self-referral laws. The federal Ethics in Patient Referral 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.

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 violation 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 must pay three times the actual damages sustained by the government, plus mandatory civil penalties of between $5,500 and $11,000 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 system or acquired a CyberKnife system through our shared ownership program with

general reimbursement advice. While we believe this will assist our customers in filing proper claims for reimbursement; and 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 as a result of any of these laws.

HIPAA. The Health Insurance Portability and Accountability Act of 1996, or 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.

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 may be different.

The primary regulatory environment in Europe is that of the European Union and the three additional member states of the European Economic Area, or 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 with the essential requirements of the applicable directives and, accordingly, may be commercially distributed throughout the member states of the European Economic Area.

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. In September 2002, our facility was awarded the ISO 13485 certification, which replaces the ISO 9001 and EN 46001 approvals, which has been subsequently maintained through periodic assessments, in accordance with the expiration dates of the standards, and we are currently authorized to affix the CE mark to our products, allowing us to sell our products throughout the European Economic Area.

We are also currently subject to regulations in Japan. A Japanese distributor received the first government approval to market the CyberKnife system from the Ministry of Health and Welfare in November 1996. In December, 2003, we received approval from the Ministry of Health, Labour and Welfare to market the CyberKnife system in Japan and a new distributor, Chiyoda Technol Corporation, was appointed to distribute the CyberKnife system. Current clinical use in Japan is limited to head and neck applications. Although we and our distributor have applied for approval of broader clinical use of the CyberKnife system in Japan, it is not possible to accurately predict the timing of this approval.

We are subject to additional regulations in other foreign countries, including, but not limited to, Canada, Taiwan, China and Korea, in order to sell our products. We intend 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 the CyberKnife system, whether through purchase or our shared ownership programs, and from performing stereotactic radiosurgery procedures using the CyberKnife system. 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 the CyberKnife system. 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 the CyberKnife system through certificate of need or similar programs could adversely affect us.

Employees

As of September 30, 2006, we had 364 employees worldwide, including 96 in research and development, 94 in sales and marketing, 65 in installation and service, 49 in manufacturing, and 60 in administration. None of the employees is represented by a labor union or is 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.

Facilities

We lease approximately 176,000 square feet of product development, manufacturing and administrative space in three buildings in Sunnyvale, California, and approximately 25,000 square feet of development and manufacturing space in Mountain View, California. Our headquarters building, which is approximately 73,000 square feet, is leased to us until February 2008 and an additional office building, which is approximately 53,000 square feet, is leased to us until May 2010. Our manufacturing facility in Sunnyvale is approximately 50,000 square feet and is leased to us until July 2011. The Mountain View facility is leased to us until October 2010. We have the right to renew the term of our headquarters lease for one three-year term upon prior written notice and the fulfillment of certain conditions. We also maintain offices in France and China. 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, will be required in the future to accommodate anticipated increases in manufacturing needs.

Legal Proceedings

From time to time we are involved in legal proceedings arising in the ordinary course of our business. We believe that there is no litigation pending that could have a material adverse effect on our results of operations and financial condition.

MANAGEMENT

Directors and Executive Officers

Our directors and executive officers as of the filing are as follows:

Name	Age	Position(s)
Euan S. Thomson, Ph.D.	44	President, Chief Executive Officer and Director
Robert E. McNamara	49	Senior Vice President, Chief Financial Officer
Chris A. Raanes	41	Senior Vice President, Chief Operating Officer
Eric P. Lindquist	46	Senior Vice President, Chief Marketing Officer
Wade B. Hampton	51	Senior Vice President, Worldwide Sales
Wayne Wu[(1)(2)]	43	Chairman of the Board of Directors
John R. Adler, Jr., M.D.	52	Director
Ted T.C. Tu.	50	Director
Roderick A. Young[(1)(2)]	63	Director
Li Yu[(1)(2)]	65	Director

(1) Member of the audit committee

(2) Member of the compensation committee

Euan S. Thomson, Ph.D. has served as our Chief Executive Officer and a member of our board of directors since March 2002, and as our President since October 2002. From March 1999 to February 2002, Dr. Thomson served during various periods as President, Chief Executive Officer and a member of the board of directors of Photoelectron Corporation, a publicly held medical device company. In July 2003, Photoelectron Corporation filed for bankruptcy. Prior to joining Photoelectron, Dr. Thomson held various positions as a medical physicist within the United Kingdom National Health Service and worked as a consultant for medical device companies, including Varian Oncology Systems and Radionics, Inc. Dr. Thomson holds a B.S. in Physics, an M.S. in Radiation Physics and a Ph.D. in Physics, with an emphasis on stereotactic brain radiotherapy, each from the University of London.

Robert E. McNamara has served as our Senior Vice President, Chief Financial Officer since December 2004. From March 2003 to June 2004, Mr. McNamara served initially as a consultant and then as Chief Executive Officer for InDefense, Inc., a security software company that was acquired by Microsoft, Inc. From March 2001 to August 2002, Mr. McNamara served as Senior Vice President and Chief Financial Officer of Recourse Technologies, Inc., a security software firm that was acquired by Symantec Corporation. From August 1997 to July 1998, Mr. McNamara served as Executive Vice President and Chief Financial Officer for Somnus Medical Technologies, Inc., a medical device company. From April 1995 to August 1997, Mr. McNamara served as Chief Financial Officer of Target Therapeutics Inc., a medical device company. Mr. McNamara currently sits on the board of directors of Northstar Neuroscience Inc., a medical device company. Mr. McNamara holds a B.S. in Accounting from the University of San Francisco and an M.B.A. from the Wharton School at the University of Pennsylvania.

Chris A. Raanes has served as our Senior Vice President, Chief Operating Officer since October 2002. From December 1999 to March 2002, Mr. Raanes served as Vice President and General Manager of Digital Imaging for PerkinElmer Optoelectronics, a business unit of PerkinElmer, Inc. From December 1998 to December 1999, Mr. Raanes was the General Manager of Amorphous Silicon, a business unit of PerkinElmer, Inc. From July 1992 to December 1998, Mr. Raanes held a number of positions, including President and General Manager of EG&G, at Reticon, a subsidiary of a predecessor to PerkinElmer. Mr. Raanes holds a B.S. and an M.S., each in Electrical Engineering, from the Massachusetts Institute of Technology.

Eric P. Lindquist has served as our Senior Vice President, Chief Marketing Officer since November 2004. From March 2004 to November 2004, Mr. Lindquist served as Senior Vice President of Marketing at Omnicell, Inc., a healthcare services company. From March 1997 to March 2004, Mr. Lindquist served in various senior management roles, including President of Brain LAB, Inc. and Director of North American Sales of BrainLAB AG, each a medical technology company. Mr. Lindquist holds a B.S. in Mechanical Engineering from Washington State University, an M.S. in Mechanical Engineering from Stanford University and an M.B.A. from the Haas School of Business at the University of California, Berkeley.

Wade B. Hampton has served as our Senior Vice President, Worldwide Sales since August 2006. From March 2003 to August 2006, Mr. Hampton served in various senior management roles, including Senior Vice President, Americas at Lumenis Ltd., a medical device company. From October 2001 to February 2003, he served as Vice President of International at Natus Medical, Inc., a medical device company. From September 1999 to October 2001 he served as Vice President of International at Coherent, Inc., a medical device company. From January 1997 to September 1999, he served in various positions, including President and Vice President, at Andros Incorporated, a scientific instrumentation company. Mr. Hampton holds a B.A. in Business Administration from the University of Florida.

Wayne Wu has served as a member of our board of directors since April 1998 and the Chairman of our board of directors since May 2004. Since June 2005, Mr. Wu has been the President of Pacific Health Investment, Inc., a life science investments company. From February 1998 through May 2005, he served as manager of Pacific Republic Capital Group, a life science investments fund. Mr. Wu holds a B.S. in Mathematics from the National Central University in Taiwan and an M.A. in Mathematics from the University of Southern California.

John R. Adler, Jr., M.D. is one of our founders and has served as a member of our board of directors since December 1990. From September 1999 through May 2004, Dr. Adler served as Chairman of our board of directors, and from October 1999 to March 2002, as our Chief Executive Officer. From January 1995 until July 1999, he served as the Vice Chairman of our board of directors. Since September 1987, Dr. Adler has been a member of the faculty at Stanford University and a Professor of Neurosurgery and Radiation Oncology at Stanford University since September 1998. Dr. Adler also serves on the editorial boards of Computer-Aided Surgery, The Journal of Medical Robotics and Computer Assisted Surgery, Chinese Journal of Clinical Oncology and Technology in Cancer Research and Treatment. Dr. Adler holds an A.B. in Biochemistry from Harvard College and an M.D. from Harvard Medical School.

Ted T.C. Tu has served as a member of our board of directors since May 2004. Mr. Tu is the president of President International Development Corporation, an investment holding company. From April 1997 to May 2000, Mr. Tu served as Vice President of Uni-President Enterprises Corp, an international conglomerate. Mr. Tu holds a B.A. in Industry and Business Administration from National Taiwan University and an M.B.A. from the University of Houston.

Roderick A. Young has served as a member of our board of directors since June 2004. Since May 2006, Mr. Young has been a Venture Partner of Three Arch Partners, a venture capital firm, focusing on the healthcare industry. From February 2003 to July 2005, Mr. Young served as the Chief Executive Officer and President of Vivant Medical, Inc., a medical device company that was acquired by Tyco International Ltd. From October 1998 to October 2002, Mr. Young served as the President and Chief Executive Officer of Targesome, Inc., a biotechnology company, of which he was a founder. From 1998 to 2001, Mr. Young served as a director of MCT Medical Inc., a medical device company that he co-founded and that was acquired by Vivant Medical, Inc. From 1993 to 1998, he served as President and Chief Executive Officer of General Surgical Innovations, Inc., a surgical device company that was acquired to Tyco International, Ltd. Mr. Young is a member of the board of directors of North

American Scientific, Inc., a medical device company. Mr. Young holds a B.S. in Industrial Engineering from Stanford University and an M.B.A. from Harvard Business School.

Li Yu has served as a member of our board of directors since June 2004. Since December 1991, Mr. Yu has served as the Chairman of the board of directors and, since 1993, as the President and Chief Executive Officer of Preferred Bank, a financial institution. From 1982 to 1987, he served as Chairman of the Board of California Pacific National Bank, which was acquired by an entity subsequently acquired by Bank of America. Mr. Yu holds an M.B.A. from the University of California, Los Angeles.

Board Composition

Our board of directors may establish from time to time by resolution the authorized number of directors. Seven directors are currently authorized. In accordance with our amended and restated certificate of incorporation to be in effect upon the closing of this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- the Class I directors will be , and , and their terms will expire at the annual meeting of stockholders to be held in 2007;
- the Class II directors will be and , and their terms will expire at the annual meeting of stockholders to be held in 2008; and
- the Class III directors will be and , and their terms will expire at the annual meeting of stockholders to be held in 2009.

Our amended and restated certificate of incorporation will provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change of control at our company.

Board Committees

Our board of directors has the following committees: an audit committee and a compensation committee. Upon the closing of this offering, our board will also have a nominating and corporate governance committee. The composition and responsibilities of each committee are described below. Members serve on these committees until their resignation or until otherwise determined by our board.

Audit Committee

Our audit committee oversees our corporate accounting and financial reporting process. Among other matters, the audit committee evaluates the independent auditors' qualifications, independence and performance; determines the engagement of the independent auditors; reviews and approves the scope of the annual audit and the audit fee; discusses with management and the independent auditors the results of the annual audit and the review of our quarterly consolidated financial statements; approves the retention of the independent auditors to perform any proposed permissible non-audit services; monitors the rotation of partners of the independent auditors on the Accuray engagement team as required by law; reviews our critical accounting policies and estimates; oversees our internal audit function and annually reviews the audit committee charter and the committee's performance. The current members of our audit committee are Mr. Young, who is the chair of the committee, Mr. Yu

and Mr. Wu. All members of our audit committee meet the requirements for financial literacy under the applicable rules and regulations of the SEC and NASDAQ. Our board has determined that Mr. Young is an audit committee financial expert as defined under the applicable rules of the SEC and has the requisite financial sophistication as defined under the applicable rules and regulations of NASDAQ. Mr. Young, Mr. Yu and Mr. Wu are independent directors as defined under the applicable rules and regulations of the SEC and NASDAQ. The audit committee operates under a written charter that satisfies the applicable standards of the SEC and NASDAQ.

Compensation Committee

Our compensation committee reviews and recommends policies relating to compensation and benefits of our officers and employees. The compensation committee reviews and approves corporate goals and objectives relevant to compensation of our chief executive officer and other executive officers, evaluates the performance of these officers in light of those goals and objectives, and sets the compensation of these officers based on such evaluations. The compensation committee also administers the issuance of stock options and other awards under our stock plans. The compensation committee will review and evaluate, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter. The current members of our compensation committee members are Mr. Young, Mr. Wu and Mr. Yu, with Mr. Yu serving as the chair of the committee. Each of the members of our compensation committee are independent under the applicable rules and regulations of the SEC, NASDAQ and the Internal Revenue Service.

Nominating and Corporate Governance Committee

Upon the closing of this offering, our board of directors will form a nominating and corporate governance committee. The nominating and corporate governance committee will be responsible for making recommendations to our board of directors regarding candidates for directorships and the size and composition of our board. In addition, the nominating and corporate governance committee will be responsible for overseeing our corporate governance guidelines and reporting and making recommendations to our board concerning governance matters. We expect that the composition of our nominating and corporate governance committee will meet the criteria for independence under, and the functioning of our nominating and corporate governance committee will comply with the applicable rules and regulations of the SEC and NASDAQ.

There are no family relationships among any of our directors or executive officers.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time during the prior three years been an officer or employee of ours. None of our executive officers currently serves or in the prior three years has served as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board or compensation committee.

Director Compensation

Following the closing of this offering, each non-management director (including Dr. Adler, but excluding any director who is also an employee) shall receive an annual cash retainer of $30,000 per year, paid quarterly, except that the lead director shall receive an annual cash retainer of $60,000 per year, paid quarterly. Such directors shall also receive an additional annual cash retainer of $5,000 per year, paid quarterly, for being a member of our compensation committee, except that the chairperson of our compensation committee shall receive an additional annual cash retainer of $10,000 per year, paid quarterly. Non-management directors shall also receive an additional annual cash retainer of

$3,000 per year, paid quarterly, for being a member of our nominating and corporate governance committee, except that the chairperson of our nominating and corporate governance committee shall receive an additional annual cash retainer of $5,000 per year, paid quarterly. Non-management directors shall also receive an additional annual cash retainer of $10,000 per year, paid quarterly, for being a member of our audit committee, except that the chairperson of our audit committee shall receive an additional annual cash retainer of $20,000 per year, paid quarterly.

To date, we have granted options to our non-employee directors in accordance with the following guidelines. Upon becoming a board member, each non-employee director receives an option to purchase 90,000 shares of common stock. These options vest monthly over the first year of service such that 50% of the options are vested upon the first anniversary of the director's commencement of service. The remaining options vest monthly over the following two years. Each non-employee director also receives an annual option grant to purchase 90,000 shares of common stock for serving on a board committee and an additional option grant to purchase 9,000 share of common stock for serving as chair of a board committee. Option grants in connection with board committee service may not exceed 18,000 shares of common stock per year, regardless of the number of committees served on or chaired. All options described in the foregoing shall vest fully upon a change of control.

All of our directors are reimbursed for the reasonable expenses incurred in connection with attending the meetings of our board of directors.

In March 2004, we entered into a consulting agreement with Dr. Adler. This agreement had a term of two years. Under the consulting agreement, Dr. Adler provided consulting services and marketing support, including support of the CyberKnife Society. Dr. Adler was entitled to receive a minimum payment of $154,000 per year, payable at the end of each three months commencing March 1, 2004. Dr. Adler's compensation under this consulting agreement was not to exceed $175,000 per year. For his support of the CyberKnife Society, Dr. Adler received a retainer fee of $2,000 per month and was granted a stock option to purchase 100,000 shares of common stock, vesting monthly over three years, commencing on October 1, 2003. In April 2006, we entered into a new consulting agreement with Dr. Adler and terminated his prior consulting agreement. Under the existing consulting agreement, Dr. Adler is entitled to receive a maximum compensation of $137,000 per year, payable at the beginning of each quarter beginning on April 1, 2006. Additionally Dr. Adler entered into a consulting agreement with the CyberKnife Society in April 2006. We assumed the contractual obligations of the CyberKnife Society under this agreement, effective as of October 3, 2006. Under this consulting agreement, Dr. Adler provides services to the CyberKnife Society and is entitled to receive a maximum compensation of $76,000 per year, payable at the beginning of each quarter beginning on April 1, 2006. This agreement has a term of one year and will renew for successive one-year periods, unless 30 days' written notice of termination is provided by either party prior to the expiration of each one-year period. We paid Dr. Adler $10,300, $266,700 and $195,300 pursuant to these agreements during the years ended June 30, 2004, 2005 and 2006, respectively.

Executive Compensation

Summary Compensation Table

The following table presents compensation information for our fiscal year ended June 30, 2006 paid to or accrued for our chief executive officer and each of our four other most highly compensated executive officers who were serving as executive officers as of the end of June 30, 2006, who we refer to as our named executive officers. The compensation includes long-term awards granted in our 2006 fiscal year. The compensation table excludes other compensation in the form of perquisites and other personal benefits that constituted less than 10% of the total annual salary and bonus for the executive officer in the fiscal year ended June 30, 2006.

	Annual compensation[1]			Long-term compensation awards	
Name and principal position(s)	Salary	Bonus	Other annual compensation	Securities underlying options	All other compensation
Euan S. Thomson, Ph.D. Chief Executive Officer and President	$ 340,000	$ 265,200	—	198,000	—
Robert E. McNamara Sr. Vice President, Chief Financial Officer	$ 225,000	$ 99,000	—	150,000	—
Chris A. Raanes Sr. Vice President, Chief Operating Officer	$ 250,000	$ 120,000	—	60,000	—
Eric P. Lindquist Sr. Vice President, Chief Marketing Officer	$ 225,000	$ 99,000	—	35,000	—
John W. Allison, Ph.D.[2] Vice President, Engineering	$ 153,750	$ 21,000	$113,052	—	—
Curtis L. Goode Vice President, U.S. Sales	$ 199,500	$ 110,000	—	—	—

(1) Includes amounts earned but deferred at the election of the executive, such as salary deferrals under our 401(k) Plan.

(2) Dr. Allison left our company in March 2006. The amount included in Other Annual Compensation relates to severance payments made to Dr. Allison.

Option Grants in Fiscal Year 2006

The following table sets forth information regarding options granted to each of our named executive officers during the fiscal year ended June 30, 2006. The exercise prices of the options we granted were the fair market value of our common stock on the date of grant, as determined by our board of directors.

The potential realizable value is calculated based on the ten-year term of the option at the time of grant. The potential realizable values at 5% and 10% appreciation are calculated by:

- multiplying the number of shares of common stock underlying the option by the exercise price per share;
- assuming the aggregate stock value derived from that calculation compounds at the annual 5% or 10% rate shown in the table from June 30, 2006 until the expiration of the options; and
- subtracting from that result the aggregate option exercise price.

Stock price appreciation of 5% and 10% is assumed pursuant to the rules promulgated by the Securities and Exchange Commission and does not represent our prediction of our stock price performance. The options in this table were granted under our 1998 Equity Incentive Plan, have ten year terms and, unless otherwise noted, vest over a period of four years. We have not granted any stock appreciation rights.

The percentage shown below of options granted is based on options to purchase an aggregate of 1,407,883 shares of Common Stock we granted to employees during fiscal year 2006.

	Individual grants					
					Potential realizable value at assumed annual rates of stock price appreciation for option term	
Name	Number of securities underlying options granted	% of total options granted to employees in fiscal year 2006	Exercise price per share	Expiration date	5%	10%
Euan S. Thomson, Ph.D.	158,000	11.2%	$4.38	11/7/2015	$400,652	$996,980
	40,000	2.8%	6.73	4/5/2016	164,460	414,065
Robert E. McNamara	150,000	10.7%	4.38	11/7/2015	380,366	946,500
Chris A. Raanes	60,000	4.3%	4.38	11/7/2015	152,146	378,600
Eric P. Lindquist	35,000	2.5%	4.38	11/7/2015	88,752	220,850
John W. Allison, Ph.D[(1)]	—	—	—	—	—	—
Curtis L. Goode	—	—	—	—	—	—

(1) Dr. Allison left the company in March 2006.

Fiscal Year 2006 Option Values

The following table describes for our named executive officers the exercisable and unexercisable options held by them as of June 30, 2006. The "Value of Unexercised In-the-Money Options at June 30, 2006" shown in the table was calculated based on an assumed initial public offering price of $ per share, less the per share exercise price, multiplied by the number of shares issuable upon exercise of the option.

	Number of securities underlying unexercised options at June 30, 2006		Value of unexercised in-the-money options at June 30, 2006	
Name	Exercisable	Unexercisable	Exercisable	Unexercisable
Euan S. Thomson, Ph.D.	1,198,334	579,666		
Robert E. McNamara	187,500	462,500		
Chris A. Raanes	477,500	182,500		
Eric P. Lindquist	138,543	246,457		
John W. Allison, Ph.D.[(1)]	—	—		
Curtis L. Goode	151,042	98,958		

(1) Dr. Allison left the company in March 2006.

Employment, Change of Control and Severance Agreements

Euan S. Thomson, Ph.D.

On November 10, 2006, we entered into an employment letter agreement with Dr. Thomson which amends and restates our prior employment letter agreement with him. Under the agreement, Dr. Thomson will serve as our President and Chief Executive Officer. The agreement provides that he is entitled to receive an annual base salary of $420,000 and is eligible to participate in our executive bonus plan under which he may earn annual incentive bonuses targeted at 60% of his base salary based upon the attainment of performance criteria established and evaluated by our company. Subject to approval by our board and pursuant to our incentive award plan, our company has agreed to grant Dr. Thomson an option to purchase 40,000 shares of our common stock not later than the first regularly scheduled meeting of our board of each calendar year during the period of his employment by our company. Each such option will be granted with an exercise price per share equal to the fair market value of a share of our common stock on the date of grant and will vest in equal monthly installments over a 4-year period from the date of grant.

Under our letter agreement with Dr. Thomson, in the event of a termination of his employment by our company without "cause" or by Dr. Thomson for "good reason," as each term is defined in the agreement, Dr. Thomson will be entitled to receive a severance payment in an amount equal to the sum of 12 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus 100% of his target annual bonus then in effect. In addition, in the event of such a termination of employment, Dr. Thomson's then outstanding stock options will become vested and exercisable immediately prior to the effective time of such termination to the extent they would have become vested during the 12-month period following the date of such termination had he remained employed by our company through such period, and our company will pay for 12 months of COBRA continuation coverage for Dr. Thomson and his eligible dependents if he elects such coverage upon such a termination. In the event of a change in control of our company (as defined in the employment letter) during the term of Dr. Thomson's employment, all of his then outstanding stock options will become fully vested and exercisable immediately prior to the effective time of such change in control. If such a change in control occurs and Dr. Thomson's employment is terminated either (i) by our company without cause or by Dr. Thomson for good reason within twelve months following the change in control or (ii) by Dr. Thomson for any reason within the 30-day period immediately following the change in control, then in lieu of the severance payments and benefits described above, he will be entitled to receive a severance payment in an amount equal to the sum of 18 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus 150% of his target annual bonus then in effect. In addition, our company will pay for 18 months of COBRA continuation coverage for Dr. Thomson and his eligible dependents if he elects such coverage. The foregoing benefits and payments may be subject to a delay of up to 6 months as necessary to avoid the imposition of additional tax under Section 409A of the Code. In addition, if any payments or benefits payable to Dr. Thomson under the employment letter or otherwise would be subject to the excise tax under Section 4999 of the Code, such payments and/or benefits will be reduced to the extent necessary so that no amount will be subject to such excise tax, provided that such reduction will only occur if Dr. Thomson will be in a more favorable after-tax position than if no such reduction was made.

The employment letter also provides for certain restrictive covenants by Dr. Thomson, including a confidentiality covenant that will apply during his employment with our company and thereafter, a non-solicitation covenant for the duration of his employment and one year thereafter, and a non-competition covenant for the duration of his employment.

Robert E. McNamara

On November 10, 2006, we entered into an employment letter agreement with Mr. McNamara which amends and restates our prior employment letter agreement with him. Under the agreement, Mr. McNamara will serve as our Senior Vice President and Chief Financial Officer. The agreement provides that he is entitled to receive an annual base salary of $275,000 and is eligible to participate in our executive bonus plan under which he may earn annual incentive bonuses targeted at 40% of his base salary based upon the attainment of performance criteria established and evaluated by our company.

Under our letter agreement with Mr. McNamara, in the event of a termination of his employment by our company without "cause" or by Mr. McNamara for "good reason," as each term is defined in the agreement, or if a change in control of our company (as defined in the employment letter) occurs and Mr. McNamara terminates his employment for any reason within the 30-day period immediately following such change in control, then Mr. McNamara will be entitled to receive a severance payment in an amount equal to the sum of 12 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus 100% of his target annual bonus then in effect. In addition, our company will pay for 12 months of COBRA continuation coverage for Mr. McNamara and his eligible dependents if he elects such coverage upon such a termination. In the event of a termination of Mr. McNamara's employment by our company without cause or by Mr. McNamara for good reason prior to a change in control, Mr. McNamara's then outstanding stock options to purchase shares of our common stock will become vested and exercisable immediately prior to the effective time of such termination to the extent they would have become vested during the 12-month period following the date of such termination had he remained employed by our company through such period. In the event of a change in control of our company during the term of Mr. McNamara's employment, all of his then outstanding stock options will become fully vested and exercisable immediately prior to the effective time of such change in control. The foregoing benefits and payments may be subject to a delay of up to 6 months as necessary to avoid the imposition of additional tax under Section 409A of the Code. In addition, if any payments or benefits payable to Mr. McNamara under the employment letter or otherwise would be subject to the excise tax under Section 4999 of the Code, such payments and/or benefits will be reduced to the extent necessary so that no amount will be subject to such excise tax, provided that such reduction will only occur if Mr. McNamara will be in a more favorable after-tax position than if no such reduction was made.

The employment letter also provides for certain restrictive covenants by Mr. McNamara, including a confidentiality covenant that will apply during his employment with our company and thereafter, a non-solicitation covenant for the duration of his employment and one year thereafter, and a non-competition covenant for the duration of his employment.

Chris A. Raanes

On November 10, 2006, we entered into an employment letter agreement with Mr. Raanes which amends and restates our prior employment letter agreement with him. Under the agreement, Mr. Raanes will serve as our Senior Vice President and Chief Operating Officer. The agreement provides that he is entitled to receive an annual base salary of $290,000 and is eligible to participate in our executive bonus plan under which he may earn annual incentive bonuses targeted at 40% of his base salary based upon the attainment of performance criteria established and evaluated by our company.

Under our letter agreement with Mr. Raanes, in the event of a termination of his employment by our company without "cause" or by Mr. Raanes for "good reason," as each term is defined in the agreement, Mr. Raanes will be entitled to receive a severance payment in an amount equal to the sum of 8 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus $66^{2}/_{3}$% of his target annual bonus then in effect. In addition, our

company will pay for 8 months of COBRA continuation coverage for Mr. Raanes and his eligible dependents if he elects such coverage upon such a termination. If a change in control of our company (as defined in the employment letter) occurs during the term of Mr. Raanes' employment and his employment is terminated by our company without cause or by Mr. Raanes for good reason, in each case within the 12-month period following the change in control, then in addition to the foregoing severance payments and benefits, all of Mr. Raanes' then outstanding stock options to purchase shares of the Company's common stock will become fully vested and exercisable immediately prior to the effective time of such termination of employment. The foregoing benefits and payments may be subject to a delay of up to 6 months as necessary to avoid the imposition of additional tax under Section 409A of the Code. In addition, if any payments or benefits payable to Mr. Raanes under the employment letter or otherwise would be subject to the excise tax under Section 4999 of the Code, such payments and/or benefits will be reduced to the extent necessary so that no amount will be subject to such excise tax, provided that such reduction will only occur if Mr. Raanes will be in a more favorable after-tax position than if no such reduction was made.

The employment letter also provides for certain restrictive covenants by Mr. Raanes, including a confidentiality covenant that will apply during his employment with our company and thereafter, a non-solicitation covenant for the duration of his employment and one year thereafter, and a non-competition covenant for the duration of his employment.

Eric P. Lindquist

On November 10, 2006, we entered into an employment letter agreement with Mr. Lindquist which amends and restates our prior employment letter agreement with him. Under the agreement, Mr. Lindquist will serve as our Senior Vice President and Chief Marketing Officer. The agreement provides that he is entitled to receive an annual base salary of $275,000 and is eligible to participate in our executive bonus plan under which he may earn annual incentive bonuses targeted at 40% of his base salary based upon the attainment of performance criteria established and evaluated by our company.

Under our letter agreement with Mr. Lindquist, in the event of a termination of his employment by our company without "cause" or by Mr. Lindquist for "good reason," as each term is defined in the agreement, Mr. Lindquist will be entitled to receive a severance payment in an amount equal to the sum of 8 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus $66^{2}/_{3}\%$ of his target annual bonus then in effect. In addition, our company will pay for 8 months of COBRA continuation coverage for Mr. Lindquist and his eligible dependents if he elects such coverage upon such a termination. If a change in control of our company (as defined in the employment letter) occurs during the term of Mr. Lindquist's employment and his employment is terminated by our company without cause or by Mr. Lindquist for good reason, in each case within the 12-month period following the change in control, then in addition to the foregoing severance payments and benefits, all of Mr. Lindquist's then outstanding stock options to purchase shares of the Company's common stock will become fully vested and exercisable immediately prior to the effective time of such termination of employment. The foregoing benefits and payments may be subject to a delay of up to 6 months as necessary to avoid the imposition of additional tax under Section 409A of the Code. In addition, if any payments or benefits payable to Mr. Lindquist under the employment letter or otherwise would be subject to the excise tax under Section 4999 of the Code, such payments and/or benefits will be reduced to the extent necessary so that no amount will be subject to such excise tax, provided that such reduction will only occur if Mr. Lindquist will be in a more favorable after-tax position than if no such reduction was made.

The employment letter also provides for certain restrictive covenants by Mr. Lindquist, including a confidentiality covenant that will apply during his employment with our company and thereafter, a non-solicitation covenant for the duration of his employment and one year thereafter, and a

non-competition covenant for the duration of his employment. In addition, we have agreed to indemnify Mr. Lindquist in the event a suit is filed against him in connection with his non-competition agreement with a former employer.

John W. Allison, Ph.D.

In July 2004, we entered into an offer letter agreement with Dr. Allison, our former Vice President, Engineering. Under the agreement Dr. Allison was entitled to receive an initial base salary of $205,000, subject to increase by our board, and was eligible to participate in our executive bonus arrangements under which Dr. Allison may earn incentive bonuses up to 40% of his base salary based upon achievement of objectives by our company and personal objectives set by our board. In addition, Dr. Allison received an additional one-time bonus of $20,000 paid after six months of full employment by us. Dr. Allison was granted an option to purchase 250,000 shares of common stock at an exercise price of $2.50 per share. Such options vest 25% upon the anniversary of Dr. Allison's commencement of employment with our company, 1/12 of the aggregate number of shares subject to the option vest monthly over the next 16 months, 1/2 of the aggregate number of shares subject to the option vest monthly over the next 24 months and 1/6 of the aggregate number of shares subject to the option vest monthly over the final nine months, such that all options are vested upon the fourth anniversary of Dr. Allison's commencement of employment with our company.

In March 2006, Dr. Allison ended his employment with our company under terms set forth in his separation agreement. Under this agreement, Dr. Allison was entitled to receive severance payments equal to six months of his base salary, two weeks of salary for every year employed and a lump sum payment of $35,000.

Wade B. Hampton

On November 10, 2006, we entered into an employment letter agreement with Mr. Hampton which amends and restates our prior employment letter agreement with him. Under the agreement, Mr. Hampton will serve as our Senior Vice President, Worldwide Sales. The agreement provides that he is entitled to receive an annual base salary of $250,000 and is eligible to participate in our executive bonus plan under which he may earn annual incentive bonuses targeted at 75% of his base salary based upon the attainment of performance criteria established and evaluated by our company. In addition, pursuant to our incentive award plan and the terms of our prior employment letter agreement with him, our company has granted Mr. Hampton an option to purchase 250,000 shares of our common stock with an exercise price per share equal to $10.00. The option will vest over a 4-year period from the date of commencement of Mr. Hampton's employment with our company, with 25% of the shares subject to the option vesting on the first anniversary of such date, and the remaining 75% vesting in equal monthly installments on each monthly anniversary thereafter. Our company has agreed to recommend to our board that our company grant Mr. Hampton an additional option no later than the September 30 following each of the first three anniversaries of Mr. Hampton's commencement of employment with our company to purchase 100,000 shares of our common stock, with each such option to have an exercise price per share equal to the fair market value of a share of our common stock on the date of grant and to vest in equal monthly installments over a 4-year period from the date of grant.

Under our letter agreement with Mr. Hampton, in the event of a termination of his employment by our company without "cause" or by Mr. Hampton for "good reason," as each term is defined in the agreement, Mr. Hampton will be entitled to receive a severance payment in an amount equal to the sum of 6 months of his annual base salary then in effect, a pro rata portion of his target annual bonus for the year of such termination, plus 50% of his target annual bonus then in effect. In addition, our company will pay for six months of COBRA continuation coverage for Mr. Hampton and his eligible dependents if he elects such coverage upon such a termination. If a change in control of our company (as defined in the employment letter) occurs during the term of Mr. Hampton's employment and his

employment is terminated by our company without cause or by Mr. Hampton for good reason, in each case within the 12-month period following the change in control, then in addition to the foregoing severance payments and benefits, all of Mr. Hampton's then outstanding stock options to purchase shares of the Company's common stock will become fully vested and exercisable immediately prior to the effective time of such termination of employment. The foregoing benefits and payments may be subject to a delay of up to six months as necessary to avoid the imposition of additional tax under Section 409A of the Code. In addition, if any payments or benefits payable to Mr. Hampton under the employment letter or otherwise would be subject to the excise tax under Section 4999 of the Code, such payments and/or benefits will be reduced to the extent necessary so that no amount will be subject to such excise tax, provided that such reduction will only occur if Mr. Hampton will be in a more favorable after-tax position than if no such reduction was made.

The employment letter also provides for certain restrictive covenants by Mr. Hampton, including a confidentiality covenant that will apply during his employment with our company and thereafter, a non-solicitation covenant for the duration of his employment and one year thereafter, and a non-competition covenant for the duration of his employment.

Executive Officer Bonuses

In August 2006, our board of directors and our compensation committee approved 2007 bonuses for certain of our executive officers. Our board of directors designated for each executive officer a target bonus amount, expressed as a percentage of his or her base salary (60% for our chief executive officer, 40% for our senior vice presidents). Our executive officers are eligible to receive bonuses if certain individual and corporate performance criteria are achieved during the 2007 fiscal year, and such bonuses are payable in cash. Furthermore, executive officers are entitled to receive a discretionary bonus amount, which may be in addition to or subtracted from such officer's target bonus amount, also expressed as a percentage of his or her base salary (50% for our chief executive officer, 30% for our senior vice presidents). Bonus payments will be based on the compensation committee's evaluation of our achievement of corporate performance goals for 2007, which were determined by the compensation committee. The use of corporate performance goals is intended to establish a link between the executive's pay and our business performance. The individual performance of each of the executive officers during 2007 will be evaluated according to the achievement of individual performance goals, which were approved by the chief executive officer and the relevant vice presidents prior to the approval of the 2007 executive bonuses by our board of directors. The board of directors is responsible for approving any bonus payment to our chief executive officer pursuant to the 2007 executive bonuses and the compensation committee is responsible for approving any bonus payment to any other executive officer pursuant to the 2007 executive bonuses.

1993 Stock Option Plan

Our 1993 Stock Option Plan was adopted by our board in 1993. The maximum number of shares of our common stock that may be issued or awarded under the 1993 Stock Option Plan is 1,744,268 shares. As of June 30, 2006, options to purchase approximately 450,000 shares of our common stock were outstanding under this plan. We do not intend to grant any additional options under the 1993 Stock Option Plan after the completion of this offering. The following is a description of the material features and provisions of the 1993 Stock Option Plan as it relates to these outstanding options.

Stock Options

Under the 1993 Stock Option Plan, we may grant incentive stock options intended to qualify for special tax treatment under Section 422 of the Code and non-qualified stock options. The term of options granted under the 1993 Stock Option Plan may not exceed 10 years, except that in the case of

an incentive stock option granted to an individual who owns more than 10% of our stock, the term of such option may not exceed 5 years. The plan provides that the exercise price of incentive stock options granted under the plan may not be less than the fair market value of our common stock at the time of grant, and the exercise price of non-qualified stock options may not be less than 85% of the fair market value of our common stock at the time of grant. Options granted to an individual who owns more than 10% of our stock at the time of grant must have an exercise price not less than 110% of the fair market value of our common stock at the time of grant. The 1993 Stock Option Plan provides that the vesting and exercisability period of options granted under the plan will be determined by the plan administrator and set forth in the stock option agreement evidencing the option grant. During the lifetime of the optionee, the option is exercisable only by the optionee. Options are not assignable or transferable by the optionee, except by will or by the laws of descent and distribution.

Administration

The 1993 Stock Option Plan is administered by our board or a duly appointed committee of our board. Our board (or its committee) determines all questions of interpretation of the plan and any options granted under this plan, and such determinations are final and binding.

Eligibility

Under the terms of the 1993 Stock Option Plan, incentive stock options may only be granted to our employees (including officers and directors who were also employees) and employees of qualifying parent or subsidiary corporations. Non-qualified stock options may be granted to employees, directors and individuals who render services as consultants, advisors or other independent contractors.

Adjustments/Change of Control

The 1993 Stock Option Plan provides that in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification or like change in our capital structure, then equitable adjustments may be made to the number of shares and exercise prices of the remaining outstanding options. In addition, the plan provides that in the case of a transfer of control (as defined in the plan), the plan administrator may, in its sole discretion, provide that any unexercisable and/or unvested portion of the outstanding options will be immediately exercisable and vested as of a date prior to the transfer of control, or arrange with the surviving, continuing, successor or purchaser corporation (or its parent corporation) for such corporation to either assume our rights and obligations under outstanding options or substitute options for such corporation for such outstanding options.

Termination or Amendment

The 1993 Stock Option Plan provides that our board can terminate or amend this plan at any time, although certain amendments may require stockholder approval and an amendment cannot adversely affect any rights under an outstanding grant without the grantee's consent, unless such an amendment is required to enable an option designated as an incentive stock option to qualify as an incentive stock option.

1998 Equity Incentive Plan

Our 1998 Equity Incentive Plan was originally adopted by our board of directors and approved by our stockholders in 1998. Subject to certain adjustments set forth in the plan, the maximum number of shares of our common stock that may be issued or awarded under 1998 Equity Incentive Plan is 14,100,000 shares. As of June 30 2006, options to purchase 10,450,285 shares of our common stock were outstanding under this plan. We do not intend to grant any additional awards under the 1998 Equity Incentive Plan after the consummation of this offering. The following is a description of the material features and provisions of the 1998 Equity Incentive Plan.

Awards

Under the 1998 Equity Incentive Plan, we may grant incentive stock options intended to qualify for special tax treatment under Section 422 of the Code, non-qualified stock options, stock grants, stock appreciation rights and stock purchase rights. As of June 30, 2006, only stock options have been granted under this plan.

Stock Options and Stock Appreciation Rights

Options granted under the 1998 Equity Incentive Plan will be designated as incentive stock options or non-qualified stock options. Notwithstanding whether an option is designated as an incentive stock option, to the extent that the aggregate fair market value of the shares with respect to which such designated incentive stock option is exercisable for the first time by any optionee during any calendar year exceeds $100,000, such excess options will be treated as non-qualified stock options. Subject to the grantee's continued employment, options and stock appreciation rights generally vest at a rate of at least 20% per year over not more than five years from the date of grant, but the plan administrator has the authority to provide that an option may become fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the plan administrator. Each option or stock appreciation right will expire after a term determined at the time of grant. However, in the case of an incentive stock option such term shall not exceed 10 years, and in the case of an option granted to a person who owns more than 10% of our stock on the date of grant, such term shall not exceed 5 years. The plan provides that incentive options may not have exercise prices less than the fair market value at the time of grant, and non-qualified stock options may not have exercise prices less than 85% of the fair market value at the time of grant. If the grantee owns more than 10% of our stock, the option may not have an exercise price less than 110% of the fair market value at the time of grant. Stock appreciation rights will be settled in cash or shares (or some combination thereof) having a value, at the time of settlement, equal to the difference between the initial value assigned to the stock appreciation right and the fair market value of our shares at the time of settlement.

The 1998 Equity Incentive Plan provides that if a grantee's employment or consulting relationship with us terminates, other than for disability or death, the grantee may, within 90 days after termination (or such other period of time as determined by the plan administrator), exercise his or her option or stock appreciation right to the extent that the option or stock appreciation right has vested by the date of termination. If a grantee's employment with us terminates due to death or disability, the grantee (or the grantee's estate) may, within 12 months thereafter, exercise his or her option or stock appreciation right to the extent that the option or stock appreciation right has vested by the date of termination of employment or consulting relationship. Other than by will or other transfer on death, options and stock appreciation rights are not transferable.

Stock Grants and Stock Purchase Rights

Stock grants and stock purchase rights may be issued either alone, in addition to, or in tandem with other awards granted under the plan and/or cash awards made outside of the plan. Stock purchase rights confer on the grantee the right to purchase some number of shares of our common stock determined by the plan administrator. The plan provides that the purchase price of the shares subject to stock purchase rights granted under the plan may not be less than 50% of the fair market value of the shares as of the date of the offer. Stock purchase rights cease to be exercisable not later than 30 days after grant. The offer of a stock grant or stock purchase right is accepted by execution of a restricted stock purchase agreement, in a form determined by the plan administrator.

Administration

The 1998 Equity Incentive Plan is currently administered by our compensation committee. The administrator, whether our board or a committee, has the authority to determine the fair market value of the common stock for the purposes of making an award, select the eligible persons to whom awards may be granted, make the awards, determine the number of shares to be covered by each award, offer to buy out for cash or shares a granted option or stock appreciation right and determine the form, terms and conditions of any agreement by which any award is made. The administrator may also determine, among other things, whether an option or stock appreciation right will be paid in cash rather than stock and the restrictions applicable to any stock grants or purchase rights.

Eligibility

Under the terms of the 1998 Equity Incentive Plan, non-qualified stock options, stock appreciation rights, stock grants and stock purchase rights may be granted to employees, non-employee directors and consultants of our company and our qualifying parent or subsidiary corporations. Incentive stock options may be granted only to our employees (including officers and directors who are also employees) and employees of qualifying parent or subsidiary corporations.

Foreign Participants

In order to comply with the laws in other countries in which we and our subsidiaries operate or have persons eligible to participate in the plan, the plan administrator has the power to determine which of our subsidiaries will be covered by the plan, determine which of our directors, employees and consultants outside the United States are eligible to participate in the plan, modify the terms and conditions of any award granted to such eligible individuals to comply with applicable foreign laws, establish subplans and modify any terms and procedures (with certain exceptions), and take any action that it deems advisable with respect to local governmental regulatory exemptions or approvals.

Adjustments

If a stock split, reverse stock split, stock dividend, combination or reclassification of our common stock, or any other increase or decrease in the number of issued shares of our common stock occurs without receipt of consideration by us, then our board can make equitable adjustments to the terms of the 1998 Equity Incentive Plan. In particular, our board can make an equitable adjustment in the number of shares authorized for issuance under this plan but as to which no options or stock appreciation rights have yet been granted or which have been returned to the 1998 Equity Incentive Plan upon cancellation or expiration of an option or stock appreciation right, as well as the price per share covered by each outstanding option or stock appreciation right.

Change of Control

The 1998 Equity Incentive Plan includes change of control provisions which may result in the accelerated vesting of outstanding option grants and stock appreciation rights. In the event of a merger or consolidation of our company with or into another corporation or the sale of all or substantially all of our assets, any outstanding options and stock appreciation rights will be assumed or an equivalent option or stock appreciation right will be substituted by the successor corporation or its parent or subsidiary. In the event that the successor corporation does not agree to assume or substitute outstanding options and stock appreciation rights granted under this plan, our board will provide for the participants to have the right to exercise all such options or stock appreciation rights previously granted, including those which would not otherwise be exercisable. Such options and stock appreciation rights will be considered assumed if, following the merger, each option or stock appreciation right confers the right to purchase, or receive the appreciation in fair market value, for each share of stock subject to the option or stock appreciation right immediately prior to the merger, the consideration

received in the merger by our stockholders. However, if the consideration received in the merger is not solely common stock of the successor corporation or its parent, our board may, with the consent of the successor corporation and the plan participants, provide for the consideration to be received upon exercise of the option or stock appreciation right to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by our stockholders.

Termination or Amendment

The 1998 Equity Incentive Plan provides that our board can amend, alter, suspend or discontinue this plan at any time, although certain amendments may require stockholder approval and an amendment cannot adversely affect any rights under an outstanding grant without the grantee's consent.

2007 Incentive Award Plan

Our board of directors plans to adopt, subject to stockholder approval, our 2007 Incentive Award Plan, for the benefit of employees and consultants of our company and our subsidiaries and members of our board. The 2007 Incentive Award Plan will become effective upon the closing of this offering. No determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the plan. The following is a description of the material features and provisions of the 2007 Incentive Award Plan.

Shares Available for Awards

Subject to certain adjustments set forth in the plan, the maximum number of shares of our common stock that may be issued or awarded under the 2007 Incentive Award Plan is shares. If any shares covered by an award granted under the plan are forfeited, or if an award expires or terminates, the shares covered by the award will again be available for grant under the plan.

Awards

The 2007 Incentive Award Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock, stock appreciation rights, performance shares, performance stock units, dividend equivalents, stock payments, deferred stock, restricted stock units, performance bonus awards, and performance-based awards to eligible individuals. Except as otherwise provided by the plan administrator, no award granted under the plan may be assigned, transferred or otherwise disposed of by the grantee, except by will or the laws of descent and distribution.

The maximum number of shares of our common stock which may be subject to awards granted to any one participant during any calendar year is and the maximum amount that may be paid to a participant in cash during any calendar year with respect to cash-based awards is $. However, these limits will not apply until the earliest of the first material modification of the plan, the issuance of all of the shares reserved for issuance under the plan, the expiration of the plan, or the first meeting of our stockholders at which directors are to be elected that occurs more than three years after the completion of this offering.

Stock Options

Stock options, including both nonqualified stock options and incentive stock options, within the meaning of Section 422 of the Code, may be granted under the 2007 Incentive Award Plan. The option exercise price of all stock options granted pursuant to the plan will not be less than 100% of the fair market value of our stock on the date of grant. No incentive stock option may be granted to a grantee who owns more than 10% of our stock unless the exercise price is at least 110% of the fair market value at the time of grant. Notwithstanding whether an option is designated as an incentive stock option, to the extent that the aggregate fair market value of the shares with respect to which such option is exercisable for the first time by any optionee during any calendar year exceeds $100,000, such excess will be treated as a nonqualified stock option.

Each independent director will automatically be granted an option to purchase shares of our stock on the date on which this offering is consummated and an option to purchase shares on the date of each subsequent annual stockholders meeting at which he or she is reelected to our board. Each independent director who is initially elected to our board after the completion of this offering will automatically be granted an option to purchase shares of our stock on the date of such election and an option to purchase shares of our stock on the date of each subsequent annual stockholders meeting at which he or she is reelected to our board. The exercise price of all options granted to independent directors will be equal to the fair market value of our common stock on the date of grant, and each such option will vest .

Payment of the exercise price of an option may be made in cash or, with the consent of the plan administrator, shares of our stock with a fair market value on the date of delivery equal to the exercise price of the option or exercised portion thereof or other property acceptable to the plan administrator (including the delivery of a notice that the participant has placed a market sell order with a broker with respect to shares then issuable upon exercise of the option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to us in satisfaction of the option exercise price). However, no participant who is a member of our board of directors or an "executive officer" of Accuray within the meaning of Section 13(k) of the Securities Exchange Act of 1934, as amended, or Exchange Act, will be permitted to pay the exercise price of an option in any method which would violate Section 13(k) of the Exchange Act.

Stock options may be exercised as determined by the plan administrator, but in no event after the tenth anniversary of the date of grant. However, in the case of an incentive stock option granted to a person who owns more than 10% of our stock on the date of grant, such term will not exceed 5 years.

Restricted Stock

Eligible employees, consultants and directors may be issued restricted stock in such amounts and on such terms and conditions as determined by the plan administrator. Restricted stock will be evidenced by a written restricted stock agreement. The restricted stock agreement will contain restrictions on transferability and other such restrictions as the plan administrator may determine, including, without limitation, limitations on the right to vote restricted stock or the right to receive dividends on the restricted stock. These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the plan administrator determines at the time of grant of the award or thereafter.

Stock Appreciation Rights

A stock appreciation right, or SAR, is the right to receive payment of an amount equal to the excess of the fair market value of a share of our stock on the date of exercise of the SAR over the fair market value of a share of our stock on the date of grant of the SAR. The plan administrator may issue SARs in such amounts and on such terms and conditions as it may determine, consistent with the terms of the plan. The plan administrator may elect to pay SARs in cash, in our stock or in a combination of cash and our stock.

Other Awards Under the Plan

The 2007 Incentive Award Plan provides that the plan administrator may also grant or issue performance shares, performance stock units, dividend equivalents, stock payments, deferred stock, restricted stock units, performance bonus awards and performance-based awards or any combination thereof to eligible employees, consultants and directors. The term of each such grant or issuance will be set by the plan administrator in its discretion. The plan administrator may establish the exercise price or purchase price, if any, of any such award.

Payments with respect to any such award will be made in cash, in our stock or in a combination of cash and our stock, as determined by the plan administrator. Any such award will be subject to such additional terms and conditions as determined by the plan administrator and will be evidenced by a written award agreement.

Performance shares. Awards of performance shares are denominated in a number of shares of our stock and may be linked to any one or more performance criteria determined appropriate by the plan administrator, in each case on a specified date or dates or over any period or periods determined by the plan administrator.

Performance stock units. Awards of performance stock units are denominated in unit equivalent of shares of our stock and/or units of value, including dollar value of shares of our stock, and may be linked to any one or more performance criteria determined appropriate by the plan administrator, in each case on a specified date or dates or over any period or periods determined by the plan administrator.

Dividend equivalents. Dividend equivalents are rights to receive the equivalent value (in cash or our stock) of dividends paid on our stock. They represent the value of the dividends per share paid by us, calculated with reference to the number of shares that are subject to any award held by the participant.

Stock payments. Stock payments include payments in the form of our stock, options or other rights to purchase our stock made in lieu of all or any portion of the compensation that would otherwise be paid to the participant. The number of shares will be determined by the plan administrator and may be based upon specific performance criteria determined appropriate by the plan administrator, determined on the date such stock payment is made or on any date thereafter.

Deferred stock. Deferred stock may be awarded to participants and may be linked to any performance criteria determined to be appropriate by the plan administrator. Stock underlying a deferred stock award will not be issued until the deferred stock award has vested, pursuant to a vesting schedule or performance criteria set by the plan administrator, and unless otherwise provided by the plan administrator, recipients of deferred stock generally will have no rights as a stockholder with respect to such deferred stock until the time the vesting conditions are satisfied and the stock underlying the deferred stock award has been issued.

Restricted stock units. Restricted stock units may be granted to any participant in such amounts and subject to such terms and conditions as determined by the plan administrator. At the time of grant, the plan administrator will specify the date or dates on which the restricted stock units will become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. At the time of grant, the plan administrator will specify the maturity date applicable to each grant of restricted stock units which will be no earlier than the vesting date or dates of the award and may be determined at the election of the participant. On the maturity date, we will transfer to the participant one unrestricted, fully transferable share of our stock for each restricted stock unit scheduled to be paid out on such date and not previously forfeited.

Performance bonus awards. Any participant selected by the plan administrator may be granted a cash bonus payable upon the attainment of performance goals that are established by the plan administrator and relate to any one or more performance criteria determined appropriate by the plan administrator on a specified date or dates or over any period or periods determined by the plan administrator. Any such cash bonus paid to a "covered employee" within the meaning of Section 162(m) of the Code may be a performance-based award as described below.

Performance-Based Awards

The plan administrator may grant awards other than options and stock appreciation rights to employees who are or may be "covered employees," as defined in Section 162(m) of the Code, that are intended to be performance-based awards within the meaning of Section 162(m) of the Code in order to preserve the deductibility of these awards for federal income tax purposes. Participants are only entitled to receive payment for a performance-based award for any given performance period to the extent that pre-established performance goals set by the plan administrator for the period are satisfied. With regard to a particular performance period, the plan administrator will have the discretion to select the length of the performance period, the type of performance-based awards to be granted, and the goals that will be used to measure the performance for the period. In determining the actual size of an individual performance-based award for a performance period, the plan administrator may reduce or eliminate (but not increase) the award. Generally, a participant will have to be employed by us or any of our qualifying subsidiaries on the date the performance-based award is paid to be eligible for a performance-based award for any period.

Administration

With respect to stock option grants and other awards granted to our independent directors, the 2007 Incentive Award Plan will be administered by our full board of directors. With respect to all other awards, the plan will be administered by a committee consisting of at least two directors, each of whom qualifies as a non-employee director pursuant to Rule 16b of the Exchange Act, an "outside director" pursuant to Section 162(m) of the Code and an independent director under the rules of the principal securities market on which our shares are traded. Immediately following the completion of this offering, this committee will be our compensation committee. In addition, our board may at any time exercise any rights and duties of the committee under the plan except with respect to matters which under Rule 16b-3 under the Exchange Act or Section 162(m) of the Code are required to be determined in the sole discretion of the committee.

The plan administrator will have the exclusive authority to administer the plan, including, but not limited to, the power to determine award recipients, the types and sizes of awards, the price and timing of awards and the acceleration or waiver of any vesting restriction. Only our employees and employees of our qualifying corporate subsidiaries are eligible to be granted options that are intended to qualify as "incentive stock options" under Section 422 of the Code.

Eligibility

Persons eligible to participate in the 2007 Incentive Award Plan include all members of our board of directors and all employees and consultants of our company and our subsidiaries, as determined by the plan administrator.

Foreign Participants

In order to comply with the laws in other countries in which we and our subsidiaries operate or have persons eligible to participate in the plan, the plan administrator will have the power to determine which of our subsidiaries will be covered by the plan, determine which of our directors, employees and consultants outside the United States are eligible to participate in the plan, modify the terms and conditions of any award granted to such eligible individuals to comply with applicable foreign laws, establish subplans and modify any terms and procedures (with certain exceptions), and take any action that it deems advisable with respect to local governmental regulatory exemptions or approvals.

Adjustments

If there is any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of our assets to stockholders, or any other change affecting the shares of our stock or the share price of our stock, the plan administrator will make proportionate adjustments to any or all of the following in order to reflect such change: (i) the aggregate number and type of shares that may be issued under the plan, (ii) the terms and conditions of any outstanding awards (including, without limitation, any applicable performance targets or criteria with respect thereto), and (iii) the grant or exercise price per share for any outstanding awards under the plan. Any adjustment affecting an award intended as "qualified performance-based compensation" will be made consistent with the requirements of Section 162(m) of the Code. The plan administrator also has the authority under the 2007 Incentive Award Plan to take certain other actions with respect to outstanding awards in the event of a corporate transaction, including provision for the cash-out, termination, assumption or substitution of such awards.

Change of Control

Except as may otherwise be provided in any written agreement between the participant and us, in the event of a change of control of our company in which awards are not converted, assumed, or replaced by the successor, such awards will become fully exercisable and all forfeiture restrictions on such awards will lapse. Upon, or in anticipation of, a change of control, the plan administrator may cause any and all awards outstanding under the 2007 Incentive Award Plan to terminate at a specific time in the future and will give each participant the right to exercise such awards during a period of time as the plan administrator, in its sole and absolute discretion, determines.

Termination or Amendment

With the approval of our board of directors, the plan administrator may terminate, amend, or modify the 2007 Incentive Award Plan at any time. However, stockholder approval will be required for any amendment to the extent necessary and desirable to comply with any applicable law, regulation or stock exchange rule, to increase the number of shares available under the plan, to permit the grant of options with an exercise price below fair market value on the date of grant, or to extend the exercise period for an option beyond ten years from the date of grant. In addition, absent stockholder approval, no option may be amended to reduce the per share exercise price of the shares subject to such option below the per share exercise price as of the date the option was granted and, except to the extent permitted by the plan in connection with certain changes in capital structure, no option may be granted in exchange for, or in connection with, the cancellation or surrender of an option having a higher per share exercise price.

Employee Stock Purchase Plan

Our board of directors plans to adopt, subject to stockholder approval, our Employee Stock Purchase Plan. The plan will become effective upon the closing of this offering. The following is a description of the material features and provisions of the plan.

Administration

The Employee Stock Purchase Plan will be administered by a committee consisting of at least two members of our board of directors, each of whom is a "non-employee director" for purposes of Rule 16b-3 under the Exchange Act. Initially, this committee will be the compensation committee of our board. Subject to the terms and conditions of the plan, the committee has the authority to make all determinations and to take all other actions necessary or advisable for the administration of the plan.

The committee is also authorized to adopt, amend and rescind rules relating to the administration of the plan. Our board of directors may at any time exercise the rights and duties of the committee to administer the plan.

Eligibility

Our employees and the employees of our designated subsidiaries who customarily work more than 20 hours per week and more than five months per calendar year are eligible to participate in the Employee Stock Purchase Plan. Each eligible employee who is employed by us or any of our designated subsidiaries on the day immediately preceding the effective date of this prospectus will automatically become a participant in the plan with respect to the first offering period. Each person who, during the course of an offering period, becomes an eligible employee subsequent to the enrollment date will be eligible to become a participant in the plan on the first day of the first purchase period following the day on which he or she becomes an eligible employee. However, no employee is eligible to participate in the plan if, immediately after the election to participate, such employee would own stock (including stock such employee may purchase under outstanding rights under the plan) representing 5% or more of the total combined voting power or value of all classes of our stock or the stock of any of our parent or subsidiary corporations. In addition, no employee is permitted to participate if the rights of the employee to purchase our common stock under the plan and all similar purchase plans maintained by us or our subsidiaries would accrue at a rate which exceeds $25,000 of the fair market value of such stock (determined at the time the right is granted) for each calendar year.

Shares Reserved

Subject to certain adjustments set forth in the plan, the maximum number of shares of our common stock that may be issued under the Employee Stock Purchase Plan is shares. In addition, the number of shares available for issuance under the plan will be automatically increased on the first day of each of our fiscal years during the term of the plan, commencing on July 1, 200 , by a number of shares equal to the least of: (1) of our outstanding capital stock on such date; (2) shares; or (3) a lesser amount determined by our board of directors.

Enrollment

Except with respect to the first offering period, eligible employees become participants in the Employee Stock Purchase Plan by executing a subscription agreement and filing it with us 15 days (or such shorter or longer period as may be determined by the plan administrator) prior to the applicable enrollment date. By enrolling in the plan, a participant is deemed to have elected to purchase the maximum number of whole shares of our common stock that can be purchased with the compensation withheld during each purchase period within the offering period for which the participant is enrolled.

Terms

Offerings; exercise dates. Under the Employee Stock Purchase Plan, an offering period will last for not more than months. Offering periods under the plan will initially be -month periods, each comprised of -month purchase periods. Under the plan, purchases will be made times during each offering period on the last trading day of each purchase period, and the dates of such purchases will be "exercise dates." A new purchase period will begin the day after each exercise date. The first offering period under the plan will begin on the effective date of this Registration Statement and will continue until May 31, 2007. After the first offering period, a new -month offering period will begin on each June 1st and December 1st thereafter during the term of the plan. The plan administrator may change the duration and timing of offering periods and exercise dates under the plan. If the fair market value per share of our common stock on any exercise date is less than the fair market value per share

on the start date of the -month offering period, then that offering period will automatically terminate, and a new -month offering period will begin on the next trading day. All participants in the terminated offering period will automatically be transferred to the new offering period.

Price and payment. Employees electing to participate in the Employee Stock Purchase Plan will authorize payroll deductions made on each pay day during each offering period until the employee instructs us to stop the deductions or until the employee's employment is terminated. Participants may contribute up to 20% of their compensation through payroll deductions, and the accumulated deductions will be applied to the purchase of shares on each semi-annual exercise date. Compensation for purposes of the plan means an employee's base straight time gross earnings and commissions, but excludes payments for overtime, shift premium, incentive compensation, incentive payments, bonuses, expense reimbursements, fringe benefits and other compensation. The purchase price per share will be equal to 85% of the fair market value of a share of our common stock on the first trading day of the applicable offering period or, if lower, 85% of the fair market value of a share of our common stock on the semi-annual exercise date. No employee is permitted to purchase more than shares during each offering period or more than shares during each purchase period.

The fair market value of a share of our common stock on any date will equal the closing sales price of a share of common stock on NASDAQ for such date, or if no sale occurred on such date, the first trading date immediately prior to such date during which a sale occurred, as reported in *The Wall Street Journal* or such other source as the plan administrator may deem reliable for such purposes.

Termination of participation. Employees may end their participation in an offering at any time during the offering period, and participation ends automatically on failure to qualify as an eligible employee for any reason. Upon such termination of the employee's participation in the Employee Stock Purchase Plan, such employee's payroll deductions not already used to purchase stock under the plan will be returned to the employee.

Adjustments

In the event of a stock split, reverse stock split, stock dividend or similar change in our capitalization, the number of shares available for issuance under the plan and the purchase price and number of shares covered by options outstanding under the plan will be appropriately adjusted.

In the event we merge with or into another corporation or sell all or substantially all of our assets, the outstanding rights under the plan will be assumed or an equivalent right substituted by the successor company or its parent or subsidiary. If the successor company or its parent or subsidiary refuses to assume the outstanding rights or substitute an equivalent right, then the offering period then in progress will be shortened by setting a new exercise date prior to the effective date of the transaction and all outstanding purchase rights will automatically be exercised on the new exercise date. The purchase price will be equal to 85% of the fair market value of a share of our common stock on the first trading day of the applicable offering period in which an acquisition occurs or, if lower, 85% of the fair market value of a share of our common stock on the date the purchase rights are exercised.

Termination or Amendment

Our board of directors may at any time and for any reason terminate or amend the Employee Stock Purchase Plan. Generally, no amendment may make any change in any option previously granted which adversely affects the rights of any participant without such participant's consent, provided that an offering period may be terminated by our board of directors if it determines that the termination of the offering period or the plan is in the best interests of our company and our stockholders. To the extent necessary to comply with Section 423 of the Code, we will obtain stockholder approval of any amendment to the plan.

Without stockholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the plan administrator may change the offering periods, limit the frequency and/or number of changes in the amount withheld during an offering period, and establish such other limitations or procedures as it determines consistent with the plan. In addition, in the event our board of directors determines that the ongoing operation of the plan may result in unfavorable financial accounting consequences, our board may, in its discretion and, to the extent necessary or desirable, modify or amend the plan to reduce or eliminate such accounting consequence. Such modifications or amendments will not require stockholder approval or the consent of any plan participants.

Unless earlier terminated by the plan administrator, the Employee Stock Purchase Plan will terminate on the tenth anniversary of the date of its initial adoption by our board.

Registration of Shares on Form S-8

We intend to file with the SEC a registration statement on Form S-8 covering the shares of common stock issuable under the 1993 Stock Option Plan, the 1998 Equity Incentive Plan, the 2007 Incentive Award Plan and the Employee Stock Purchase Plan.

401(k) Plan

We sponsor a defined contribution plan intended to qualify under Section 401 of the Code, or a 401(k) plan. Employees who are at least 18 years of age are generally eligible to participate and may enter the plan on the first day of the month coinciding with or following their date of hire. Participants may make pre-tax contributions to the plan of up to 100% of their eligible compensation, subject to a statutorily prescribed annual limit. Each participant is fully vested in his or her contributions and the investment earnings, if employed on or before December 31, 2005. For those employed on or after January 1, 2006, a four year (25% per year) vesting schedule is applied to matching and discretionary employer contributions. We make matching contributions to the 401(k) plan in an amount equal to 100% of employee salary deferrals. In applying this matching percentage, however, matching contributions in any plan year will not exceed $2,000. Contributions by the participants to the plan, and the income earned on these contributions, are generally not taxable to the participants until withdrawn. Participant contributions are held in trust as required by law. Individual participants may direct the trustee to invest their accounts in authorized investment alternatives.

Limitations of Liability and Indemnification

Our amended and restated certificate of incorporation and amended and restated bylaws, each to be effective upon the completion of this offering, will provide that we will indemnify our directors and officers, and may indemnify our employees and other agents, to the fullest extent permitted by the Delaware General Corporation Law, which prohibits our amended and restated certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director's duty of loyalty to us or to our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; and
- any transaction from which the director derived an improper personal benefit.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. Our amended and restated certificate of

incorporation does not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, remain available under Delaware law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws. Under our amended and restated bylaws, we are also be empowered to enter into indemnification agreements with our directors, officers, employees and other agents and to purchase insurance on behalf of any person whom we are required or permitted to indemnify.

In addition to the indemnification required in our amended and restated certificate of incorporation and amended and restated bylaws, we entered into indemnification agreements with each of our current directors, officers, and some employees before the completion of this offering. These agreements provide for the indemnification of our directors, officers, and some employees for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were our agents. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

Distribution Agreements

Japanese Distributor

In June 1993, we entered into a distribution agreement with Marubeni Machinery & Engineering Corporation, a Japanese corporation, or Marubeni, which is an affiliate of Marubeni Corporation, a holder of more than 5% of our outstanding voting stock, to exclusively distribute the CyberKnife system in Japan. The agreement became effective on the date we first received an order from Marubeni, and the terms of the agreement provide that it would continue until seven years after approval from the Japanese Ministry of Health for the CyberKnife system, which approval was granted in November 1996. The agreement was subject to automatic renewal for two year periods, provided certain conditions are met. On December 1, 1995, the Medical Division of Marubeni established itself as Meditec Corporation, a Japanese corporation, or Meditec. With our written consent, Marubeni transferred its rights and responsibilities under the distribution agreement to Meditec, an entity affiliated with Marubeni. Under the agreement, the specific terms for each sale of the CyberKnife system by us to Meditec were generally set forth on a form of purchase order.

In May 2003, we entered into an agreement with Meditec, under which we agreed, among other things, to upgrade previously purchased CyberKnife systems by Meditec. The aggregate purchase price for these upgrades was approximately $16.9 million. Under the agreement Meditec agreed to pay us a deposit of $1.0 million. The agreement provided that if we changed distributors in Japan, we would first fill new orders in Japan from existing inventory held by Meditec, with a payment of at least $1.5 million to be paid to Meditec when a system was installed. In addition, we agreed to refurbish one system for approximately $300,000. In January 2004, we entered into a distribution agreement with a different Japanese distributor and no longer distribute our products through Meditec in Japan. Existing Meditec customers at that time have been transitioned to the new distributor. During the years ended June 30, 2004, 2005 and 2006, we received payments of $13.1 million, $2.8 million and $9.8 million, respectively, relating to products and services provided to Meditec. As of September 30, 2006, Meditec had no outstanding accounts receivable with us.

Taiwanese Distributor

In June 2004, we entered into distribution agreements with President Medical Technologies, Co., Ltd. Inc., a Taiwanese corporation, or PMTC, to exclusively distribute the CyberKnife system in Taiwan, Hong Kong and Macao SAR. This agreement became effective on June 1, 2004 and will expire on December 31, 2008. This agreement replaced a prior agreement with PMTC effective as of September 1, 2002, which replaced a prior agreement effective as of March 1, 2000. The term of the current agreement may be extended for additional one year periods if we and PMTC mutually agree. Under the agreement, PMTC must provide us a purchase order or letter of intent nine months in advance of the order's proposed shipment date. Within four to six months prior to the proposed shipment date, PMTC must pay us a non-refundable amount of $450,000. Of the balance, 90% is due upon presentation of documents evidencing shipment and 10% is due upon 180 days following shipment. The agreement may be terminated by either party for a material breach of the agreement which is not cured within 45 days of notice of that breach, or upon a change of control of us. Either party may terminate the agreement without cause within the first two years of the agreement, upon six months advance written notice to the other party. Payments from PMTC were $3.9 million, $21,000 and $632,000 for the years ended June 30, 2004, 2005 and 2006, respectively.

President (BVI) International Investment Holdings Ltd., an affiliate of PMTC, is a holder of more than 5% of our outstanding voting stock. In addition, Mr. Tu, one of our directors, is President of President International Development Corporation, of which President (BVI) International Investment Holdings Ltd. is a wholly owned subsidiary, and is a director of PMTC.

Investors' Rights Agreement

We and certain holders of our capital stock have entered into an agreement, pursuant to which these stockholders will have registration rights with respect to their shares of common stock following this offering. See "Description of capital stock—registration rights" for a further description of the terms of this agreement.

Employment, Change of Control and Severance Agreements

We have entered into offer letter agreements which contain certain change of control and severance provisions with our executive officers. See "Management—employment, change of control and severance agreements."

Consulting Agreements

We are a party to two consulting agreements with Dr. Adler, one of our directors. See "Management—director compensation."

Indemnification of Directors and Officers

Our articles of incorporation and bylaws in effect as of the date of this prospectus provide that we will indemnify each of our directors and officers to the fullest extent permitted by the California General Corporation Law. Our amended and restated certificate of incorporation and amended and restated bylaws to be effective upon the completion of this offering provide that we will indemnify each of our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. Furthermore, we have entered into indemnification agreements with each of our directors and officers. For further information, see "Management—limitations of liability and indemnification." In addition, certain indemnification provisions are contained in Mr. Lindquist's offer letter. For further information, see "Management—employment, change of control and severance agreements.

Issuances of Common Stock

We have issued options to our executive officers. See "Management—executive compensation."

In June 2004 we granted Franz Cristiani, a former member of our board of directors, options exercisable for 108,000 shares of our common stock, Mr. Young options exercisable for 99,000 shares of our common stock, and Mr. Yu options exercisable for 99,000 shares of our common stock, all with an exercise price of $1.75 per share.

In November 2004 we granted Mr. Wu options exercisable for 90,000 shares of our common stock, Mr. Young options exercisable for 9,000 shares of our common stock, and Mr. Yu options exercisable for 9,000 shares of our common stock, each with an exercise price of $3.50 per share.

In June 2005 we granted Mr. Cristiani options exercisable for 18,000 shares of our common stock, Mr. Young options exercisable for 9,000 shares of our common stock, and Mr. Yu options exercisable for 9,000 shares of our common stock, each with an exercise price of $3.50 per share.

In November 2005 we granted Mr. Young options exercisable for 9,000 shares of our common stock and Mr. Yu options exercisable for 9,000 shares of our common stock, each with an exercise price of $4.38 per share.

In August 2006 we granted, each of Messrs. Cristiani, Wu, Young and Yu options exercisable for 18,000 shares of our common stock, each with an exercise price of $9.50 per share.

In March 2004, we issued 2,280,000 shares of our common stock to Pacific Republic Capital, of which Wayne Wu, a director of Accuray, is an affiliate, upon exercise of a warrant to purchase shares

of our common stock for an aggregate exercise price of $3,192,000. In March 2005, we issued 1,000,000 shares of our common stock to Pacific Republic Capital upon exercise of a warrant to purchase shares of our common stock for an aggregate exercise price of $1,400,000.

Other Arrangements

Dr. Adler, a member of our board of directors, is a Professor of Neurosurgery and Radiation Oncology at Stanford University. During the years ended June 30, 2004, 2005 and 2006, we recognized revenue of $100,000, $585,000 and $195,000, respectively, relating to products and services provided to Stanford University. Advances and deferred revenue of $195,000 and $1,340,000 were recorded at June 30, 2005 and 2006, respectively, relating to payments made by Stanford University. We also have a license agreement with Stanford University. See "Business—intellectual property."

PRINCIPAL AND SELLING STOCKHOLDERS

The following table presents information as to the beneficial ownership of our common stock as of November 10, 2006 by:

- each of the executive officers listed in the summary compensation table;
- each of our directors;
- all of our directors and executive officers as a group;
- each stockholder known by us to be the beneficial owner of more than 5% of our common stock; and
- each of the selling stockholders.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned, subject to community property laws where applicable. Shares of our common stock subject to options or warrants that are currently exercisable or exercisable within 60 days of November 10, 2006 are deemed to be outstanding and to be beneficially owned by the person holding the options or warrants for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

This table lists applicable percentage ownership based on 41,915,897 shares of common stock outstanding as of November 10, 2006, after giving effect to the conversion of our outstanding preferred stock into 25,186,285 shares of common stock immediately prior to the closing of this offering and the exercise of a warrant to purchase 525,000 shares of common stock immediately prior to the closing of this offering.

Unless otherwise indicated, the address for each of the stockholders in the table below is c/o Accuray Incorporated, 1310 Chesapeake Terrace, Sunnyvale, California 94089.

	Beneficial Ownership Prior to the Offering				
Name and Address of Beneficial Owner	**Shares Beneficially Owned[1]**	**Options and Warrants Exercisable Within 60 Days of November 10, 2006**	**Percent before the Offering**	**Shares Being Offered**	**Percent after the Offering**
5% Stockholders					
President (BVI) International Investment Holdings Ltd.[2]	15,500,919	—	37.0%		
Marubeni Corporation[3]	3,350,939	—	8.0		
Executive Officers and Directors					
Euan S. Thomson, Ph.D	1,380,919	1,380,919	3.2		
Robert E. McNamara	306,251	306,251	*		
Chris A. Raanes	552,501	552,501	1.3		
Eric P. Lindquist	197,799	197,799	*		
Wade B. Hampton	—	—	*		
Wayne Wu[4]	813,280	74,625	1.9		
John R. Adler, Jr., M.D.	1,865,004	1,260,234	4.3		
Ted T.C. Tu[2][5]	15,500,919	—	37.0		
Roderick A. Young	105,875	105,875	*		
Li Yu	104,688	104,688	*		
All executive officers and directors as a group (10 persons)	20,827,236	3,982,892	45.4%		

* Represents beneficial ownership of less than one percent (1%) of the outstanding shares of our common stock.

(1) Includes shares of common stock issuable pursuant to stock options and warrants exercisable within 60 days of November 10, 2006.

(2) The address of President (BVI) International Investment Holdings Ltd., or PIIH, and Mr. Tu is 10F-1, No. 560, Sec.4, Chung Hsiao East Road, Taipei 110, Taiwan, R.O.C. Mr. Tu, one of our directors, is the President of President International Development Corporation, or PIDC. PIIH is a wholly owned subsidiary of PIDC.

(3) The address of Marubeni Corporation is 4-2 Ohtemachi 1-Chome, Chiyoda-Ku, Tokyo, Japan.

(4) Includes 148,580 shares held by Mr. Wu's spouse. Mr. Wu disclaims beneficial ownership of such shares, except to the extent of his pecuniary interest therein.

(5) Includes 15,500,919 shares held by PIIH.

DESCRIPTION OF CAPITAL STOCK

General

Upon the closing of this offering, our amended and restated certificate of incorporation will authorize us to issue up to 100,000,000 shares of common stock, $0.001 par value per share, and 5,000,000 shares of preferred stock, $0.001 par value per share. The following information assumes our reincorporation in Delaware, the filing of our amended and restated certificate of incorporation and the conversion of all outstanding shares of our preferred stock into shares of common stock upon the completion of this offering.

Prior to the closing of this offering, we plan to reincorporate from California to Delaware to take advantage of the substantial and established judicial precedent in the Delaware courts as to the legal principles applicable to actions that may be taken by a corporation and to the conduct of a corporation's board of directors.

As of June 30, 2006, and assuming the conversion of all outstanding preferred stock into common stock and the exercise of a warrant to purchase 525,000 shares of common stock immediately prior to the consummation of this offering, there were outstanding:

- 41,954,435 shares of our common stock held by approximately 250 stockholders; and
- 10,900,285 shares issuable upon exercise of outstanding stock options.

Common Stock

Dividend Rights

Subject to preferences that may apply to shares of preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of funds legally available at the times and in the amounts that our board of directors may determine.

Voting Rights

Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Cumulative voting for the election of directors will not be provided for in our amended and restated certificate of incorporation, which means that the holders of a majority of the shares voted can elect all of the directors then standing for election.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights and is not subject to conversion or redemption.

Right to Receive Liquidation Distributions

Upon our dissolution or liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders are distributable ratably among the holders of our common stock, subject to the preferential rights and payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Preferred Stock

Upon the completion of this offering, our board of directors will have the authority, without further action by our stockholders, to issue up to 5,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption,

liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of common stock. The issuance of our preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change of control of our company or other corporate action. Upon completion of this offering, no shares of preferred stock will be outstanding, and we have no present plan to issue any shares of preferred stock.

Anti-Takeover Provisions

Certificate of Incorporation and Bylaws to be in Effect Upon the Completion of This Offering

Our amended and restated certificate of incorporation to be in effect upon the completion of this offering will provide for our board of directors to be divided into three classes, with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the shares of common stock outstanding will be able to elect all of our directors. Our amended and restated certificate of incorporation and amended and restated bylaws to be effective upon the completion of this offering will provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing, and that only our board of directors, chairman of the board, chief executive officer, or president (in the absence of a chief executive officer) may call a special meeting of stockholders.

Our amended and restated certificate of incorporation will require a $66^{2}/_{3}\%$ stockholder vote for the amendment, repeal or modification of certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws relating to the classification of our board of directors, the requirement that stockholder actions be effected at a duly called meeting, and the designated parties entitled to call a special meeting of the stockholders. The combination of the classification of our board of directors, the lack of cumulative voting and the $66^{2}/_{3}\%$ stockholder voting requirements will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions may have the effect of deterring hostile takeovers or delaying changes in our control or management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions may also have the effect of preventing changes in our management.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a

period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least $66^{2}/_{3}\%$ of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

Acceleration of Options Upon Change of Control

Under our 1998 Equity Incentive Plan and 2007 Incentive Award Plan, in the event of certain mergers, a reorganization or consolidation of our company with or into another corporation or the sale of all or substantially all of our assets or all of our capital stock wherein the successor corporation does not assume outstanding options or issue equivalent options, our board of directors is required to accelerate vesting of options outstanding under that plan.

Registration rights

Demand Registration Rights

After the completion of this offering, the holders of approximately 25,186,285 shares of our common stock will be entitled to certain demand registration rights. At any time beginning six months after the consummation of this offering, the holders of at least 30% of these shares can request that we

register all or a portion of their shares. We will only be required to file two registration statements upon the stockholders' exercise of these demand registration rights. Additionally, we will not be required to effect a demand registration during the period beginning 60 days prior to the filing and six months following the effectiveness of a registration statement relating to a public offering of our securities.

Piggyback Registration Rights

After the completion of this offering, the holders of approximately 25,186,285 shares of common stock will be entitled to certain piggyback registration rights. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a registration related to employee benefit plans, debt securities, or corporate reorganizations, the holders of registrable securities are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their registrable shares in the registration. We will pay the registration expenses of the holders of registrable securities for the incidental or piggyback registrations.

Form S-3 Registration Rights

After the completion of this offering, the holders of approximately 25,186,285 shares of our common stock will be entitled to request that we register their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and if the aggregate price to the public of the shares offered is at least $2.0 million. These stockholders may make an unlimited number of requests for registration on Form S-3. However, we will not be required to effect a registration on Form S-3 during the period beginning 60 days prior and six months following any underwritten public offering of our common stock or if we have effected two such registrations in a given 12 month period. Additionally, we are obligated to pay the registration expenses of only the first four of any such registrations on Form S-3.

The registration rights described above will expire, with respect to any particular stockholder, after our initial public offering, when that stockholder can sell its shares under Rule 144 of the Securities Act during any 90-day period. In any event, all such registration rights shall expire three years after the consummation of this offering.

In connection with this offering, each stockholder that has registration rights agreed not to sell or otherwise dispose of any securities without the prior written consent the underwriters for a period of 180 days, which may be extended in certain circumstances. See section entitled "Underwriting."

Listing

We are applying to have our common stock listed on NASDAQ under the symbol "ARAY."

Transfer Agent and Registrar

After the completion of this offering the transfer agent and registrar for our common stock will be Mellon Investor Services LLC.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-UNITED STATES HOLDERS OF OUR COMMON STOCK

The following discussion describes the material U.S. federal income tax consequences to non-U.S. holders (as defined below) of the acquisition, ownership and disposition of our common stock issued pursuant to this offering. This discussion is not a complete analysis of all the potential U.S. federal income tax consequences relating thereto, nor does it address any estate tax consequences or any tax consequences arising under any state, local or foreign tax laws or any other U.S. federal tax laws. This discussion is based on the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the Internal Revenue Service, or the IRS, all as in effect as of the date of this offering. These authorities may change, possibly retroactively, resulting in U.S. federal income tax consequences different from those discussed below. No ruling has been or will be sought from the IRS with respect to the matters discussed below, and there can be no assurance that the IRS will not take a contrary position regarding the tax consequences of the acquisition, ownership or disposition of our common stock, or that any such contrary position would not be sustained by a court.

This discussion is limited to non-U.S. holders who purchase our common stock issued pursuant to this offering and who hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax considerations that may be relevant to a particular holder in light of that holder's particular circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to holders subject to special rules under the U.S. federal income tax laws, including, without limitation, U.S. expatriates, partnerships and other pass-through entities, "controlled foreign corporations," "passive foreign investment companies," "foreign personal holding companies," corporations that accumulate earnings to avoid U.S. federal income tax, financial institutions, insurance companies, brokers, dealers or traders in securities, commodities or currencies, tax-exempt organizations, tax-qualified retirement plans, persons subject to the alternative minimum tax, and persons holding our common stock as part of a hedging or conversion transaction or straddle, or a constructive sale, or other risk reduction strategy.

PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS AND ANY OTHER U.S. FEDERAL TAX LAWS.

Definition of Non-U.S. Holder

For purposes of this discussion, a non-U.S. holder is any beneficial owner of our common stock that is not a "U.S. person" or a partnership for U.S. federal income tax purposes. A U.S. person is any of the following:

- a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has validly elected to be treated as a U.S. person for U.S. federal income tax purposes.

If a partnership (or other entity taxed as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner in the partnership generally will depend on the status of the partner and upon the activities of the partnership. Accordingly, partnerships that hold our common stock and partners in such partnerships are urged to consult their tax advisors regarding the specific U.S. federal income tax consequences to them.

Distributions on Our Common Stock

Payments on our common stock will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and will first be applied against and reduce a holder's adjusted tax basis in the common stock, but not below zero. Any excess will be treated as capital gain.

Dividends paid to a non-U.S. holder of our common stock that are not effectively connected with a United States trade or business conducted by such holder generally will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable tax treaty. To receive the benefit of a reduced treaty rate, a non-U.S. holder must furnish to us or our paying agent a valid IRS Form W-8BEN (or applicable successor form) certifying such holder's qualification for the reduced rate. This certification must be provided to us or our paying agent prior to the payment of dividends and must be updated periodically. Non-U.S. holders that do not timely provide us or our paying agent with the required certification, but which qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States, and dividends paid on the common stock are effectively connected with such holder's United States trade or business, the non-U.S. holder will be exempt from U.S. federal withholding tax. To claim the exemption, the non-U.S. holder must furnish to us or our paying agent a properly executed IRS Form W-8ECI (or applicable successor form).

Any dividends paid on our common stock that are effectively connected with a non-U.S. holder's U.S. trade or business (or if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States) generally will be subject to U.S. federal income tax on a net income basis in the same manner as if such holder were a resident of the United States, unless an applicable tax treaty provides otherwise. A non-U.S. holder that is a foreign corporation also may be subject to a branch profits tax equal to 30% (or such lower rate specified by an applicable tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders are urged to consult any applicable tax treaties that may provide for different rules.

A non-U.S. holder who claims the benefit of an applicable income tax treaty generally will be required to satisfy applicable certification and other requirements prior to the distribution date. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

Gain on Disposition of Our Common Stock

A non-U.S. holder generally will not be subject to U.S. federal income tax on any gain realized upon the sale or other disposition of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States, or if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States;

- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or

- our common stock constitutes a U.S. real property interest by reason of our status as a "U.S. real property holding corporation," or USRPHC, for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding the disposition or the non-U.S. holder's holding period for our common stock.

Generally, a corporation is a USRPHC if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. We believe that we currently are not and will not become a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our other business assets, there can be no assurance that we will not become a USRPHC in the future. In the event we do become a USRPHC, as long as our common stock is regularly traded on an established securities market, our common stock will be treated as U.S. real property interests only with respect to a non-U.S. holder that actually or constructively holds more than 5% of our common stock.

Unless an applicable tax treaty provides otherwise, gain described in the first bullet point above will be subject to U.S. federal income tax on an net income basis in the same manner as if such holder were a resident of the United States. Non-U.S. holders that are foreign corporations also may be subject to a branch profits tax equal to 30% (or such lower rate specified by an applicable tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders are urged to consult any applicable tax treaties that may provide for different rules.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a flat 30% rate, but may be offset by U.S. source capital losses.

Information Reporting and Backup Withholding

We must report annually to the IRS and to each non-U.S. holder the amount of dividends on our common stock paid to such holder and the amount of any tax withheld with respect to those dividends. These information reporting requirements apply even if no withholding was required because the dividends were effectively connected with the holder's conduct of a U.S. trade or business, or withholding was reduced or eliminated by an applicable tax treaty. This information also may be made available under a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established. Backup withholding, currently at a 28% rate, however, generally will not apply to payments of dividends to a non-U.S. holder of our common stock provided the non-U.S. holder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as by providing a valid IRS Form W-8BEN or W-8ECI, or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient.

Payments of the proceeds from a disposition by a non-U.S. holder of our common stock made by or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) will apply to those payments if the broker does not have documentary evidence that the beneficial owner is a non-U.S. holder, an exemption is not otherwise established, and the broker is:

- a U.S. person;

- a controlled foreign corporation for U.S. federal income tax purposes;

- a foreign person 50% or more of whose gross income is effectively connected with a U.S. trade or business for a specified three-year period; or

- a foreign partnership if at any time during its tax year (1) one or more of its partners are U.S. persons who hold in the aggregate more than 50% of the income or capital interest in such partnership or (2) it is engaged in the conduct of a U.S. trade or business.

Payment of the proceeds from a non-U.S. holder's disposition of our common stock made by or through the U.S. office of a broker generally will be subject to information reporting and backup withholding unless the non-U.S. holder certifies as to its non-U.S. holder status under penalties of perjury, such as by providing a valid IRS Form W-8BEN or W-8ECI, or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and we cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding warrants or options, in the public market after this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon the completion of this offering, based on the number of shares outstanding as of June 30, 2006, we will have shares of common stock outstanding, assuming no exercise of the underwriters' over allotment option and no exercise of outstanding options or warrants. Of the outstanding shares, all of the shares sold in this offering will be freely tradable, except that any shares held by our affiliates, as that term is defined in Rule 144 under the Securities Act, may only be sold in compliance with the limitations described below.

The remaining shares of common stock will be deemed restricted securities as defined under Rule 144. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144, 144(k) or 701 promulgated under the Securities Act, which rules are summarized below. Subject to the lock-up agreements described below, all of these restricted securities will be available for sale in the public market beginning 180 days after the date of this prospectus under Rule 144, subject in some cases to volume limitations, Rule 144(k) or Rule 701.

Lock-Up Agreements

All of our directors and officers and substantially all of our stockholders have signed lock-up agreements under which they have agreed not to sell, transfer or dispose of, directly or indirectly, any shares of our common stock or any securities into or exercisable or exchangeable for shares of our common stock without the prior written consent of J.P. Morgan Securities Inc. and UBS Securities LLC, for a period of 180 days, subject to a possible extension under certain circumstances, after the date of this prospectus. These agreements are described below under "Underwriting."

Rule 144

In general, under Rule 144 as currently in effect, a person, or group of persons whose shares are required to be aggregated, who has beneficially owned shares that are restricted securities as defined in Rule 144 for at least one year is entitled to sell, within any three-month period commencing 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1% of the then outstanding shares of our common stock, which will be approximately shares immediately after this offering; or
- the average weekly trading volume in our common stock on NASDAQ during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

In addition, a person who is not deemed to have been an affiliate at any time during the three months preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years would be entitled to sell these shares under Rule 144(k) without regard to the requirements described above. To the extent that shares were acquired from one of our affiliates, a person's holding period for the purpose of effecting a sale under Rule 144 would commence on the date of transfer from the affiliate.

Rule 701

In general, under Rule 701 of the Securities Act, any of our employees, directors, officers, consultants or advisors who purchased shares from us in connection with a compensatory stock or option plan or other written agreement is eligible to resell those shares in reliance on Rule 144, but without compliance with certain restrictions, including the holding period contained in Rule 144. However, substantially all shares issued under Rule 701 are subject to lock-up agreements and will only become eligible for sale at the expiration of such agreements.

Registration Rights

On the date beginning 180 days after the date of this prospectus, the holders of 30,023,175 shares of our common stock, or their transferees, will be entitled to certain rights with respect to the registration of those shares under the Securities Act. For a description of these registration rights, please see "Description of Capital Stock—registration rights." After these shares are registered, they will be freely tradable without restriction under the Securities Act.

Stock Options

As of June 30, 2006, options to purchase a total of 10,900,285 shares of our common stock were outstanding. We intend to file a registration statement on Form S-8 under the Securities Act to register all shares of our common stock subject to outstanding options, all shares of our common stock issued upon exercise of stock options and all shares of our common stock issuable under our stock option and employee stock purchase plans. Accordingly, shares of our common stock issued under these plans will be eligible for sale in the public markets, subject to vesting restrictions and the lock-up agreements described above.

UNDERWRITING

J.P. Morgan Securities Inc. and UBS Securities LLC are acting as joint bookrunning managers of the offering, and, together with Piper Jaffray & Co. and Jefferies & Company, Inc., are acting as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus, each underwriter named below has agreed to purchase, and we and the selling stockholders have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter's name.

Underwriter	Number of shares
J.P. Morgan Securities Inc.	
UBS Securities LLC	
Piper Jaffray & Co.	
Jefferies & Company, Inc.	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the over-allotment option described below) if they purchase any of the shares.

The underwriters propose to offer some of the shares directly to the public at the public offering price set forth on the cover page of this prospectus and some of the shares to dealers at the public offering price less a concession not to exceed $ per share. The underwriters may allow, and dealers may reallow, a concession not to exceed $ per share on sales to other dealers. If all of the shares are not sold at the initial offering price, the representatives may change the public offering price and the other selling terms.

We and the selling stockholders have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of our common stock at the public offering price less the underwriting discount. The underwriters may exercise the option solely for the purpose of covering over-allotments, if any, in connection with this offering. To the extent the option is exercised, each underwriter must purchase a number of additional shares approximately proportionate to that underwriter's initial purchase commitment.

We, our officers and directors and our other stockholders have agreed that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of each of J.P. Morgan Securities Inc. and UBS Securities LLC, dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for our common stock, subject to customary exceptions. After the 180-day lock-up period, these shares may be sold, subject to applicable securities laws. Notwithstanding the foregoing, for the purpose of allowing the underwriters to comply with NASD Rule 2711(f)(4), if:

- during the last 17 days of the initial 180-day lock-up period, we issue an earnings release or material news, or a material event relating to us occurs; or

- prior to the expiration of the initial 180-day lock-up period, we announce that we will release earnings results during the 16-day period beginning on the last day of the initial 180-day lock-up period,

then in each case the initial 180-day lock-up period will be extended until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, unless J.P. Morgan Securities Inc. and UBS Securities LLC waive, in writing, such extension.

Prior to this offering, there has been no public market for our common stock. Consequently, the initial public offering price for the shares was determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price were our record of operations, our current financial condition, our future prospects, our markets, the economic conditions in and future prospects for the industry in which we compete, our management, and currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company. We cannot assure you, however, that the prices at which the shares will sell in the public market after this offering will not be lower than the initial public offering price or that an active trading market in our common stock will develop and continue after this offering.

The following table shows the underwriting discounts and commissions that we and the selling stockholders are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares of common stock.

	Paid by us		Paid by the selling stockholders	
	No exercise	Full exercise	No exercise	Full exercise
Per share	$	$	$	$
Total	$	$	$	$

In connection with the offering, the underwriters may purchase and sell shares of our common stock in the open market. These transactions may include short sales and syndicate covering transactions. Short sales involve syndicate sales of common stock in excess of the number of shares to be purchased by the underwriters in the offering, which creates a syndicate short position. "Covered" short sales are sales of shares made in an amount up to the number of shares represented by the underwriters' over-allotment option. In determining the source of shares to close out the covered syndicate short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the overallotment option. Transactions to close out the covered syndicate short involve either purchases of our common stock in the open market after the distribution has been completed or the exercise of the over-allotment option. The underwriters may also make "naked" short sales of shares in excess of the over-allotment option. The underwriters must close out any "naked" short position by purchasing shares of our common stock in the open market. A "naked" short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.

In addition, the underwriters may stabilize or maintain the price of our common stock by bidding for or purchasing shares of our common stock in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker-dealers participating in this offering are reclaimed if shares of our common stock previously distributed in this offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of our common stock at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of our common stock to the extent that it discourages resales of our common stock. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on NASDAQ or otherwise and, if commenced, may be discontinued at any time.

Any of these activities may have the effect of preventing or retarding a decline in the market price of our common stock. They may also cause the price of our common stock to be higher than the price

that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions on NASDAQ or in the over-the-counter market, or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

We estimate that our total expenses of this offering will be $.

The underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business.

A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters. The representatives may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. The representatives will allocate shares to underwriters that may make Internet distributions on the same basis as other allocations. In addition, shares may be sold by the underwriters to securities dealers who resell shares to online brokerage account holders.

We and the selling stockholders have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Notice to Prospective Investors in the European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of our common stock described in this prospectus may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to our common stock that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

- to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

- to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or

- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of our common stock described in this prospectus located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an "offer to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/ EC and includes any relevant implementing measure in each relevant member state.

The sellers of our common stock have not authorized and do not authorize the making of any offer of our common stock through any financial intermediary on their behalf, other than offers made

by the underwriters with a view to the final placement of our common stock as contemplated in this prospectus. Accordingly, no purchaser of our common stock, other than the underwriters, is authorized to make any further offer of our common stock on behalf of the sellers or the underwriters.

Notice to Prospective Investors in the United Kingdom

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive, or Qualified Investors, that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000, or Financial Promotion, Order 2005, or the Order, or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons). This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus nor any other offering material relating to our common stock described in this prospectus has been submitted to the clearance procedures of the Autorité des Marchés Financiers or by the competent authority of another member state of the European Economic Area and notified to the Autorité des Marchés Financiers. Our common stock have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to our common stock has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of our common stock to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with, Article L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Code *monétaire et financier;*
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or
- in a transaction that, in accordance with article L.411-2-II-1°-or-2°-or 3° of the French Code *monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the Autorité des Marchés Financiers, does not constitute a public offer (*appel public à l'épargne*).

Our common stock may be resold directly or indirectly, only in compliance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French Code *monétaire et financier.*

LEGAL MATTERS

Certain legal matters with respect to the legality of the issuance of the shares of common stock offered by this prospectus will be passed upon for us by Latham & Watkins LLP, Menlo Park, California. Certain legal matters in connection with the offering will be passed upon for the underwriters by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California.

EXPERTS

Our consolidated financial statements for the years ended June 30, 2004, 2005, and 2006 were audited by Grant Thornton LLP. The consolidated financial statements as of June 30, 2005 and 2006, and for each of the three years in the period ended June 30, 2006, included in this prospectus have been so included in reliance on the reports of Grant Thornton LLP, independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

CHANGE IN ACCOUNTANTS

On June 1, 2006, with the approval of our board of directors, we dismissed PricewaterhouseCoopers LLP as our independent registered public accounting firm previously engaged as the principal accountant to audit our consolidated financial statements and engaged Grant Thornton LLP as our independent registered public accounting firm. Although we had engaged PricewaterhouseCoopers LLP to audit our financial statements for the fiscal years ended June 30, 2004 and 2005, PricewaterhouseCoopers LLP had not completed these audits at the time of their dismissal and accordingly, had not delivered to us a report on our financial statements for that period.

During the 2004 and 2005 fiscal years and the subsequent interim period preceding PricewaterhouseCoopers LLP's dismissal, there were no reportable events (as defined in Item 304(a)(1)(iii) of Regulation S-K) or disagreements with PricewaterhouseCoopers LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which reportable events or disagreements, if not resolved to the satisfaction of PricewaterhouseCoopers LLP, would have caused it to make reference to the subject matter of the reportable events or disagreements in connection with its reports, other than a material weakness relating to the misapplication of revenue recognition accounting policies which PricewaterhouseCoopers LLP identified relative to fiscal 2004.

PricewaterhouseCoopers LLP was provided with a copy of the above statements and we requested that it furnish a letter addressed to the Commission stating whether it agrees with these statements. A copy of PricewaterhouseCoopers LLP's letter, if any, will be included as an exhibit to the registration statement of which this prospectus is a part.

During the 2004 and 2005 fiscal years, and the subsequent interim period prior to engaging Grant Thornton LLP, neither we nor anyone on our behalf consulted Grant Thornton LLP regarding either (1) the application of accounting principles to a specified transaction regarding us, either completed or proposed, or the type of audit opinion that might be rendered on our consolidated financial statements, or (2) any matter regarding us that was a disagreement, as that term is defined in Item 304(a)(1)(iv) of Regulation S-K, or a reportable event, as that term is defined in Item 304(a)(1)(iii) of Regulation S-K. Grant Thornton LLP has reported on the consolidated financial statements for each of the fiscal years ended June 30, 2004, 2005 and 2006 included in this prospectus.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the common stock. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, some items of which are contained in exhibits to the registration statement as permitted by the rules and regulations of the Commission. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits and the consolidated financial statements and notes filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement is this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The exhibits to the registration statement should be referenced for the complete contents of these contracts and documents. You may obtain copies of this information by mail from the Public Reference Section of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the public reference rooms by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports, proxy statements and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with this law, will file periodic reports, proxy statements and other information with the Commission. These periodic reports, proxy statements and other information will be available for inspection and copying at the Commission's public reference facilities and the website of the SEC referred to above.

ACCURAY INCORPORATED

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders
Accuray Incorporated

We have audited the accompanying consolidated balance sheets of Accuray Incorporated and subsidiaries as of June 30, 2005 and 2006, and the related consolidated statements of operations, temporary equity and stockholders' equity (deficiency), and cash flows for each of the three years in the period ended June 30, 2006. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Accuray Incorporated and subsidiaries as of June 30, 2005 and 2006, and the consolidated results of their operations and their cash flows for each of the three years in the period ended June 30, 2006 in conformity with accounting principles generally accepted in the United States of America.

/s/ Grant Thornton LLP

San Francisco, California
November 7, 2006

Accuray Incorporated

Consolidated Balance Sheets

(in thousands, except share amounts)

	June 30,		(unaudited)
	2005	2006	Pro forma stockholders' equity (deficiency) at June 30, 2006
Assets			
Current assets:			
Cash and cash equivalents	$ 17,024	$ 27,856	
Restricted cash	158	1	
Accounts receivable, net of allowance for doubtful accounts of $45 and $20 at June 30, 2005 and 2006, respectively	5,087	11,698	
Inventories	6,371	10,100	
Prepaid expenses and other current assets	1,933	3,512	
Deferred cost of revenue—current	3,095	4,810	
Total current assets	33,668	57,977	
Property and equipment, net	12,961	21,945	
Goodwill	4,495	4,495	
Intangible assets, net	1,688	1,446	
Deferred cost of revenue—noncurrent	33,381	51,778	
Other assets	667	982	
Total assets	$ 86,860	$ 138,623	
Liabilities, temporary equity and stockholders' equity (deficiency)			
Current liabilities:			
Accounts payable	$ 5,445	$ 4,726	
Accrued compensation	2,827	8,561	
Other accrued liabilities	2,805	6,494	
Note payable—current	2,893	—	
Customer advances—current	10,152	10,338	
Deferred revenue—current	7,365	31,641	
Total current liabilities	31,487	61,760	
Long-term liabilities:			
Customer advances—noncurrent	1,431	12,191	
Deferred revenue—noncurrent	82,610	118,023	
Total liabilities	115,528	191,974	
Commitments and contingencies (Note 8)			
Temporary equity:			
Redeemable convertible preferred stock, no par value Authorized: 30,000,000 shares; issued and outstanding: 17,419,331 shares at June 30, 2005 and 2006; liquidation amount: $36,497 and $40,354 at June 30, 2005 and 2006, respectively; Pro forma: preferred stock, par value $0.001 per share; 5,000,000 shares authorized, no shares issued and outstanding (unaudited)	27,504	27,504	—
Stockholders' equity (deficiency)			
Common stock, no par value, 70,000,000 shares authorized, 15,815,532 and 16,243,150 shares issued and outstanding at June 30, 2005 and 2006, respectively; Pro forma: 100,000,000 shares authorized, par value $0.001 per share, 41,954,435 shares issued and outstanding (unaudited)	12,653	13,276	42
Additional paid-in capital	37,481	43,988	85,251
Notes receivable from stockholders	(331)	(206)	(206)
Deferred stock-based compensation	(19,008)	(17,272)	(17,272)
Accumulated other comprehensive loss	(20)	—	—
Accumulated deficit	(86,947)	(120,641)	(120,641)
Total stockholders' equity (deficiency)	(56,172)	(80,855)	$ (52,826)
Total liabilities, temporary equity and stockholders' equity (deficiency)	$ 86,860	$ 138,623	

Assets and liabilities include related party transaction amounts as follows:

	2005	2006
Accounts receivable	$ 440	$ 1
Deferred cost of revenue—current	$ 2,512	$ 2,929
Deferred cost of revenue—noncurrent	$ 9,919	$ 7,254
Customer advances—current	$ —	$ 2,290
Customer advances—noncurrent	$ 1,000	$ 3,951
Deferred revenue—current	$ 5,571	$ 7,169
Deferred revenue—noncurrent	$ 18,032	$ 15,375

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

Accuray Incorporated

Consolidated Statements of Operations

(in thousands, except share amounts)

	Years ended June 30,		
	2004	2005	2006
Net revenue:			
Products	$ 12,639	$ 9,636	$ 36,089
Shared ownership programs	4,831	8,067	8,145
Services	1,974	3,050	4,848
Other	125	1,624	3,815
Total net revenue	19,569	22,377	52,897
Cost of revenue:			
Costs of products	6,135	6,422	18,531
Costs of shared ownership programs	1,076	1,572	2,513
Costs of services	1,275	2,044	3,948
Costs of other	10	1,077	2,500
Total cost of revenue	8,496	11,115	27,492
Gross profit	11,073	11,262	25,405
Operating expenses:			
Selling and marketing	10,647	16,361	25,186
Research and development	7,311	11,655	17,788
General and administrative	4,672	8,129	15,923
Total operating expenses	22,630	36,145	58,897
Loss from operations	(11,557)	(24,883)	(33,492)
Other income (expense):			
Interest and other income	13	156	438
Interest and other expense	(149)	(394)	(382)
Loss before provision for income taxes	(11,693)	(25,121)	(33,436)
Provision for income taxes	3	68	258
Net loss	$ (11,696)	$ (25,189)	$ (33,694)
Net loss per common share, basic and diluted	$ (1.00)	$ (1.76)	$ (2.11)
Weighted-average shares used in computing net loss per common share, basic and diluted	11,737,265	14,282,643	15,997,419

Revenue and cost of revenue include related party transaction amounts as follows:

	2004	2005	2006
Net revenue:			
Products	$ 2,225	$ 7,252	$ —
Services	$ 113	$ 1,446	$ 2,195
Other	$ 100	$ 1,583	$ 3,754
Cost of revenue:			
Costs of products	$ 1,062	$ 1,954	$ —
Costs of services	$ —	$ 47	$ 140
Costs of other	$ 10	$ 1,037	$ 2,463

Costs of revenue, selling and marketing, research and development, and general and administrative charges include stock-based compensation as follows:

	2004	2005	2006
Cost of revenue	$ 190	$ 454	$ 863
Selling and marketing	$ 826	$ 1,903	$ 2,569
Research and development	$ 648	$ 1,157	$ 1,574
General and administrative	$ 785	$ 2,812	$ 3,237

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

Accuray Incorporated

Consolidated Statements of Temporary Equity and Stockholders' Equity (Deficiency)

(in thousands, except share amounts)

	Redeemable convertible preferred stock		Common stock		Additional paid-in capital	Notes receivable from stockholders	Deferred stock-based compensation	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' equity (deficiency)
	Shares	Amount	Shares	Amount						
Balances at June 30, 2003	17,419,331	$ 27,504	10,706,625	$ 7,316	$ 11,846	$ —	$ (2,148)	$ —	$ (50,062)	$ (33,048)
Exercise of common stock warrants	—	—	2,280,000	3,192	—	—	—	—	—	3,192
Exercise of stock options	—	—	610,739	249	—	—	—	—	—	249
Deferred stock-based compensation	—	—	—	—	11,365	—	(11,365)	—	—	—
Reversal of deferred stock-based compensation	—	—	—	—	(1,078)	—	1,078	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	2,312	—	—	2,312
Compensation expense related to options issued to non-employees	—	—	—	—	137	—	—	—	—	137
Cumulative translation adjustment	—	—	—	—	—	—	—	(7)	—	(7)
Net loss	—	—	—	—	—	—	—	—	(11,696)	(11,696)
Total comprehensive loss										(11,703)
Balances at June 30, 2004	17,419,331	27,504	13,597,364	10,757	22,270	—	(10,123)	(7)	(61,758)	(38,861)
Exercise of common stock warrants	—	—	1,000,000	1,400	—	—	—	—	—	1,400
Exercise of stock options	—	—	842,315	416	—	—	—	—	—	416
Exercise of stock options using notes	—	—	447,839	331	—	(331)	—	—	—	—
Stock repurchased	—	—	(71,986)	(251)	—	—	—	—	—	(251)
Deferred stock-based compensation	—	—	—	—	15,631	—	(15,631)	—	—	—
Reversal of deferred stock-based compensation	—	—	—	—	(1,215)	—	1,215	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	5,531	—	—	5,531
Compensation expense related to options issued to non-employees	—	—	—	—	164	—	—	—	—	164
Compensation expense related to modification of options granted	—	—	—	—	631	—	—	—	—	631
Cumulative translation adjustment	—	—	—	—	—	—	—	(13)	—	(13)
Net loss	—	—	—	—	—	—	—	—	(25,189)	(25,189)
Total comprehensive loss										(25,202)
Balances at June 30, 2005	17,419,331	27,504	15,815,532	12,653	37,481	(331)	(19,008)	(20)	(86,947)	(56,172)

Accuray Incorporated

Consolidated Statements of Temporary Equity and Stockholders' Equity (Deficiency) (continued)

(in thousands, except share amounts)

	Redeemable convertible preferred stock		Common stock		Additional paid-in capital	Notes receivable from stockholders	Deferred stock-based compensation	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' equity (deficiency)
	Shares	Amount	Shares	Amount						
Balances at June 30, 2005	17,419,331	27,504	15,815,532	12,653	37,481	(331)	(19,008)	(20)	(86,947)	(56,172)
Exercise of common stock warrants	—	—	16,666	167	—	—	—	—	—	167
Exercise of stock options	—	—	431,659	538	—	—	—	—	—	538
Payment received on notes used to exercise stock options	—	—	—	—	—	125	—	—	—	125
Stock repurchased	—	—	(20,707)	(82)	—	—	—	—	—	(82)
Deferred stock-based compensation	—	—	—	—	7,860	—	(7,860)	—	—	—
Reversal of deferred stock-based compensation	—	—	—	—	(1,651)	—	1,651	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	7,945	—	—	7,945
Compensation expense related to options issued to non-employees	—	—	—	—	186	—	—	—	—	186
Compensation expense related to modification of options granted	—	—	—	—	112	—	—	—	—	112
Cumulative translation adjustment	—	—	—	—	—	—	—	20	—	20
Net loss	—	—	—	—	—	—	—	—	(33,694)	(33,694)
Total comprehensive loss										(33,674)
Balances at June 30, 2006	17,419,331	$ 27,504	16,243,150	$ 13,276	$ 43,988	$ (206)	$ (17,272)	$ —	$ (120,641)	$ (80,855)

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,		
	2004	2005	2006
Cash Flows From Operating Activities			
Net loss	$ (11,696)	$ (25,189)	$ (33,694)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization	1,450	2,080	3,806
Stock-based compensation	2,449	6,326	8,243
Provision for bad debts	106	45	(21)
Loss on write-down of inventories	53	1,747	619
Loss on disposal of fixed assets	57	932	54
Accrued interest expense on note payable	—	93	103
Changes in assets and liabilities:			
Accounts receivable	(1,943)	(293)	(6,590)
Inventories	(219)	(2,294)	(4,348)
Prepaid expenses and other current assets	(144)	(939)	(1,579)
Deferred cost of revenue	(11,457)	(14,028)	(20,112)
Other assets	(271)	(112)	(315)
Accounts payable	1,061	2,077	(719)
Accrued liabilities	1,427	1,866	9,423
Customer advances	1,784	3,682	10,946
Deferred revenue	22,249	42,022	59,689
Net cash provided by operating activities	4,906	18,015	25,505
Cash Flows From Investing Activities			
Purchases of property and equipment	(5,617)	(6,249)	(13,602)
Cash received for tenant improvements	300	—	1,000
Restricted cash	23	(153)	157
Business acquisition, net of cash acquired	—	(5,613)	—
Purchase of investment	—	(250)	—
Net cash used in investing activities	(5,294)	(12,265)	(12,445)
Cash Flows From Financing Activities			
Payment of note payable	—	—	(2,996)
Exercise of common stock options for cash	249	342	538
Payment received on notes used to exercise stock options	—	—	64
Stock repurchase	—	(177)	(21)
Exercise of common stock warrants for cash	3,192	1,400	167
Net cash provided by (used in) financing activities	3,441	1,565	(2,248)
Effect of exchange rate changes on cash	(7)	(13)	20
Net increase in cash and cash equivalents	3,046	7,302	10,832
Cash and cash equivalents at beginning of period	6,676	9,722	17,024
Cash and cash equivalents at end of period	$ 9,722	$ 17,024	$ 27,856
Supplemental Disclosure of Cash Flow Information			
Cash paid for interest	$ 4	$ 8	$ —
Income taxes paid	$ —	$ 527	$ 183
Non-cash Investing and Financing Activities			
Note payable from business acquisition	$ —	$ 2,800	$ —
Common stock options exercised using notes	$ —	$ 331	$ —
Cashless stock repurchase and options exercised	$ —	$ 74	$ 122
Settlement of receivable in exchange for reduction in debt	(611)	(817)	—

Cash flows include related party transaction amounts as follows:

	2004	2005	2006
Accounts receivable	$ 1,575	$ 423	$ 439
Deferred cost of revenue	$ (7,910)	$ 3,272	$ 2,248
Customer advances	$ (770)	$ —	$ 5,241
Deferred revenue	$ 13,955	$ (8,131)	$ (1,059)

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

Notes to Consolidated Financial Statements

1. Description of Business

Accuray Incorporated (the "Company") was incorporated in California in December 1990 and commenced operations in January 1992. The Company designs, develops and sells the CyberKnife system, an image-guided robotic radiosurgery system used for the treatment of solid tumors anywhere in the body.

2. Summary of Significant Accounting Policies

Pro Forma Stockholders' Equity (Deficiency) (Unaudited)

Upon the consummation of the initial public offering ("IPO") contemplated herein, all of the outstanding shares of Series A, A1, B and C preferred stock will be automatically converted into 25,186,285 shares of common stock. The June 30, 2006 unaudited pro forma stockholders' equity (deficiency) has been prepared assuming the conversion of Series A, A1, B and C preferred stock outstanding as of June 30, 2006 into common stock and the exercise of a warrant to purchase 525,000 shares of common stock.

Liquidity

The Company has incurred net losses each year since inception. At June 30, 2006, the Company had an accumulated deficit of $120,641,000. Although the Company has recorded positive cash flow from operations for each of the last four fiscal years, in order to continue its operations and achieve its business objectives, the Company must achieve profitability or obtain additional debt or equity financing. There can be no assurance that the Company will be able to obtain additional debt or equity financing on terms acceptable to the Company, or at all. The failure of the Company to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on the Company's business, results of operations and financial condition.

The failure of the Company to win widespread acceptance of its products by hospitals, physicians and patients could have a material adverse effect on the Company's business, results of operations, future cash flows and financial condition.

Basis of Presentation and Principles of Consolidation

In December 2003, the Company formed a wholly owned subsidiary, Accuray International SARL, headquartered in Geneva, Switzerland. The purpose of Accuray International is to manage the sales, marketing and service activities of Accuray's international subsidiaries. In January 2004, the Company formed a wholly owned subsidiary, Accuray Europe SARL, headquartered in Paris, France. The purpose of Accuray Europe is to market the Company's products in Europe. In January 2005, the Company completed the purchase of the High Energy Systems Division ("HES") of American Science and Engineering, Inc. ("AS&E") and integrated this operation into the Company's existing manufacturing operation. In October 2005, the Company formed a wholly owned subsidiary, Accuray UK Ltd, headquartered in London, United Kingdom. The purpose of Accuray UK Ltd is to market the Company's products in the United Kingdom and other countries in northern Europe. In December 2005, the Company formed a wholly owned subsidiary, Accuray Asia Limited, headquartered in Hong Kong, SAR. The purpose of Accuray Asia Limited is to market the Company's products in Asia. The consolidated financial statements include the accounts of the subsidiaries, and all inter-company transactions and balances have been eliminated.

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 average exchange rates during the year. Resulting translation adjustments are recorded directly to accumulated comprehensive income within the statement of stockholders' equity (deficiency). Foreign currency transaction gains and losses are included as a component of interest and other income.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Key estimates and assumptions made by the Company relate to stock-based compensation, allowances, valuation allowances for deferred tax assets, impairment of long-lived assets, goodwill and deferred revenue and costs for services. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. Cash equivalents consist of amounts invested in money market accounts and amounted to $14,519,000 and $3,623,000 at June 30, 2005 and 2006, respectively.

Restricted Cash

Restricted cash amounts include amounts deposited as collateral to assure future credit availability, typically credit card purchases, arrangements in contracts with others requiring that specific cash amounts be set aside, or the Company's statements of intention with regard to particular deposits. Restricted cash amounts were $158,000 and $1,000 at June 30, 2005 and 2006, respectively.

Fair Value of Financial Instruments

The carrying values of the Company's financial instruments including cash and 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. Based upon interest rates currently available to the Company for debt with similar terms, the carrying value of the Company's note payable is also approximately equal to its fair value.

Concentration of Credit Risk and Other Risks and Uncertainties

The Company's cash and cash equivalents are deposited with one major financial institution. At times, deposits in this institution 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 following summarizes revenues from customers in excess of 10% of total net revenue:

	Years ended June 30,		
	2004	2005	2006
AB Medica s.p.a. (Italy)	22%	—	—
Illinois CyberTechnologies (Bloomington, IL)	15%	—	—
Meditec/Marubeni Corporation (related party)	—	32%	11%
President Medical Technology Corportion (related party)	12%	12%	—
St. Anthony's Hospital (Oklahoma City, OK)	16%	—	—
	65%	44%	11%

The following summarizes the accounts receivable from customers in excess of 10% of total accounts receivable:

	Years ended June 30,		
	2004	2005	2006
AB Medica s.p.a. (Italy)	14%	—	—
Atlantic Health System (Summit, NJ)	42%	—	—
Cowealth Medical Science (China)	—	—	18%
Mission Hospitals (Asheville, NC)	—	19%	—
Neurochirurgische Praxis (Germany)	—	12%	—
Northwest Community Healthcare (Arlington Heights, IL)	—	—	26%
Shadyside Hospital (Pittsburgh, PA)	—	22%	—
St. Joseph's Hospital (Phoenix, AZ)	—	13%	—
	56%	66%	44%

Accounts receivable are typically not collateralized. The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses. Accounts receivable are deemed past due in accordance with the contractual terms of the agreement. Accounts are charged against our allowance for doubtful accounts once collection efforts are unsuccessful. Historically, such losses have been within management's expectations. The Company's allowance for doubtful accounts was approximately $45,000 and $20,000 at June 30, 2005 and 2006, respectively.

The Company is subject to risks common to companies in the medical device industry including, but not limited to: new technological innovations, dependence on key personnel, dependence on key suppliers, protection of proprietary technology, compliance with government regulations, uncertainty of widespread market acceptance of products, product liability and the need to obtain additional financing. The Company's products include components subject to rapid technological change. Certain components used in manufacturing have relatively few alternative sources of supply, and establishing additional or replacement suppliers for such components cannot be accomplished quickly. While the Company has ongoing programs to minimize the adverse effect of such uncertainty and considers technological change in estimating its allowances, uncertainty continues to exist.

The products currently under development by the Company may require clearance by the U.S. Food and Drug Administration ("FDA") or other international regulatory agencies prior to commercial sales. There can be no assurance that the Company's products will receive the necessary clearance. If the Company were denied such clearance or such clearance was delayed, it could have a material adverse impact on the Company.

Inventories

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

Revenue Recognition

Revenue is generated from the sale of products, shared ownership programs, and by providing related services, which include installation services, post-contract customer support ("PCS"), training and consulting. The Company's products and upgrades to those products include software that is essential to the functionality of the products and accordingly, the Company accounts for the sale of its products pursuant to Statement of Position No. 97-2, *Software Revenue Recognition* ("SOP 97-2"), as amended.

The Company recognizes product revenues for sales of the CyberKnife system, replacement parts and accessories when there is persuasive evidence of an arrangement, the fee is fixed or determinable, collection of the fee is probable and delivery has occurred as prescribed by SOP 97-2. Payments received in advance of product shipment are recorded as customer advances and are recognized as revenue or deferred revenue upon product shipment or installation.

For arrangements with multiple elements, the Company allocates arrangement consideration to services and PCS based upon vendor specific objective evidence ("VSOE") of fair value of the respective elements. VSOE of fair value for the services element is based upon the Company's standard rates charged for the services when such services are sold separately or based upon the price established by management having the relevant authority when that service is not yet being sold separately. When contracts contain multiple elements, and VSOE of fair value exists for all undelivered elements, the Company accounts for the delivered elements, principally the CyberKnife system, based upon the "residual method" as prescribed by SOP No. 98-9, *Modification of SOP No. 97-2 with Respect to Certain Transactions.* If VSOE of fair value does not exist for all the undelivered elements, all revenue is deferred until the earlier of; (1) delivery of all elements, or (2) establishment of VSOE of fair value for all undelivered elements.

Upgrade services revenues relate to the sale of specialized services specifically contracted to provide current technology capabilities for units previously sold through a distributor into the Japan market. The upgrade programs include elements where VSOE of fair value has not been established for the PCS. As a result, associated revenues are deferred and recognized ratably over the term of the PCS arrangement, generally four years.

Service revenue for providing PCS, which includes warranty services, extended warranty services, unspecified when and if available product updates and technical support is deferred and recognized ratably over the service period, generally one year, until no further obligation exists. At the time of sale, the Company provides for the estimated incremental costs of meeting product warranty if the incremental warranty costs are expected to exceed the related service revenues. Training and consulting service revenues, that are not deemed essential to the functionality of the CyberKnife system, are recognized as such services are performed.

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

For all sales, the Company uses either a signed agreement or a binding purchase order as evidence of an arrangement. Sales to third party distributors are evidenced by a distribution agreement governing the relationship together with binding purchase orders on a transaction-by-transaction basis. The Company records revenues from an arrangement with distributors based on a sell-through method where revenue is recognized upon shipment of the product to the end user customer once all revenue recognition criteria are met. These criteria require that persuasive evidence of an arrangement exists, the fees are fixed or determinable, collection of the resulting receivable is probable and there is no right of return.

The Company's agreements with customers and distributors do not contain product return rights.

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

The Company also enters into shared ownership programs with certain customers. Under the terms of such programs, the Company retains title to its CyberKnife system, while the customer has use of the product. The Company generally receives a minimum monthly payment and earns additional revenues from the customer based upon its use of the product. The Company may provide unspecified upgrades to the product during the term of each program when and if available. Upfront non-refundable payments from the customer are deferred and recognized as revenue over the contractual period. Revenues from shared ownership programs are recorded as they become earned and receivable and are included within shared ownership program revenues in the consolidated statements of operations. During the years ended June 30, 2004, 2005 and 2006, the Company recognized approximately $4,831,000, $8,067,000 and $8,145,000, respectively, of revenue from these shared ownership programs.

The CyberKnife systems associated with the Company's shared ownership programs are recorded within property, plant and equipment and are depreciated over their estimated useful life of ten years. Depreciation and warranty expense attributable to the CyberKnife shared ownership systems are recorded within costs of products.

Deferred Revenue and Deferred Cost of Revenue

Deferred revenue consists of deferred product revenue, deferred shared ownership program revenue, deferred service revenue and deferred other revenue. Deferred product revenue arises from timing differences between the shipment of product and satisfaction of all revenue recognition criteria consistent with the Company's revenue recognition policy. Deferred shared ownership program revenue results from the receipt of advance monthly minimum lease payments, which will be recognized ratably over the term of the shared ownership program. Deferred service revenue results from the advance payment for services to be delivered over a period of time, usually one year. Service revenue is recognized ratably over the service period. Deferred other revenue results primarily from the Japan upgrade services programs and is due to timing differences between the receipt of cash payments for those upgrades and final delivery to the end user customer. Deferred cost of revenue consists of the direct costs associated with the manufacture of units, direct service costs for which the revenue has been deferred in accordance with the Company's revenue recognition policies, and deferred costs associated with the Japan upgrade services. Deferred revenue, and associated deferred cost of revenue, expected to be realized within one year are classified as current liabilities and current assets, respectively.

Customer Advances

Customer advances represent payments made by customers in advance of product shipment.

Property and Equipment

Property and equipment are recorded at cost less accumulated depreciation and amortization. Depreciation is calculated using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are amortized on a straight-line basis over the life 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 are depreciated over three years. CyberKnife systems covered by the shared ownership program are depreciated over their estimated useful life of ten 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. The cost and related accumulated depreciation of property and equipment sold or no longer in service are eliminated from the accounts and any gain or loss is included in the statements of operations.

Impairment of Long-Lived Assets

In accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-lived Assets*, the Company reviews long-lived assets, including 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. Under SFAS No. 144, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount.

Impairment, if any, is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value. Through June 30, 2006, there have been no such losses.

Goodwill and Purchased Intangible Assets

Goodwill represents the excess of acquisition cost over the fair value of tangible and identified intangible net assets of businesses acquired. Goodwill is not amortized, but is tested for impairment on an annual basis and between annual tests in certain circumstances, and written down when impaired. Purchased intangible assets other than goodwill are amortized over their 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 is typically seven years.

Shipping and Handling

The Company's shipping and handling costs billed to customers are included in product revenue. Shipping and handling costs incurred are included in costs of products.

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 salary costs for research and development personnel, cost for materials used in research and development activities, costs for outside services and allocated portions of facilities and other corporate costs.

Software Development Costs

Software development costs are included in research and development and are expensed as incurred. After technological feasibility is established, material software development costs are capitalized. The capitalized cost is then amortized on a straight-line basis over the estimated product life, or on the ratio of current revenues to total projected product revenue, whichever is greater. To date, the period between achieving technological feasibility, which the Company has defined as the establishment of a working model which typically occurs when the beta testing commences, and the general availability of such software has been short and software development costs qualifying for capitalization have been insignificant. Accordingly, the Company has not capitalized any software development costs.

Advertising Expenses

The Company expenses the costs of advertising and promoting its products and services as incurred. Advertising expense was $18,000, $16,000 and $20,000 for the years ended June 30, 2004, 2005 and 2006, respectively.

Stock-Based Compensation

Effective July 1, 2003, the Company began to account for stock-based employee compensation arrangements in accordance with Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123"), and SFAS No. 148, *Accounting for Stock-Based Compensation-Transition and Disclosure* ("SFAS 148"). Under SFAS 123, stock-based compensation expense is measured on the date of grant based on the fair value of the award. Upon adoption of this standard, the Company elected to use the retrospective restatement method of transition.

The Company believes that the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated at the date of grant using the Black-Scholes option pricing model, as prescribed by SFAS 123, using fair values of common stock between $2.63 and $7.63 per share and the following weighted-average assumptions during the years ended June 30, 2004, 2005 and 2006:

	Years ended June 30,		
	2004	2005	2006
Risk-free interest rate	3.77%	3.81%	4.42%
Dividend yield	—	—	—
Weighted-average expected life	6.25 years	6.25 years	6.25 years
Expected volatility	99.6%	94.8%	86.7%

In accordance with the requirements of SFAS 123, the Company has recorded deferred stock-based compensation for the estimated fair value of the options on the date of grant. This deferred stock-based compensation is amortized to expense over the period during which the options become exercisable, generally four years. During the years ended June 30, 2004, 2005 and 2006, the Company reversed $1,078,000, $1,215,000 and $1,651,000, respectively, of deferred stock-based compensation related to cancellations of unvested options of certain employees who had been granted stock options and subsequently terminated their employment with the Company. During the years ended June 30, 2004, 2005 and 2006, the Company amortized $2,312,000, $5,531,000 and $7,945,000 of stock-based compensation expense, respectively, for stock options granted to employees.

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options are earned in accordance with SFAS 123 and Emerging Issues Task Force No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The Company believes that the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated using the Black-Scholes option pricing model, as

prescribed by SFAS 123, using fair values of common stock between $2.63 and $7.63 per share and the following weighted-average assumptions during the years ended June 30, 2004, 2005 and 2006:

	Years Ended June 30,		
	2004	2005	2006[1]
Risk-free interest rate	4.45%	4.20%	—
Dividend yield	—	—	—
Weighted-average expected life	10 years	10 years	—
Expected volatility	75.0%	71.0%	—

(1) No options granted to non-employees in 2006.

The stock-based compensation expense related to non-employees fluctuates as the underlying assumptions fluctuate. During the years ended June 30, 2004, 2005 and 2006, the Company recognized $137,000, $164,000 and $186,000 of stock-based compensation expense, respectively, for stock options granted to non-employees.

For certain stock option grants, the Company made modifications to the option terms. These modifications included extension of the vesting period and acceleration of vesting. During the years ended June 30, 2004, 2005 and 2006, the Company recognized $0, $631,000 and $112,000 of stock-based compensation expense, respectively, for modifications of stock options granted.

Net Loss Per Common Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the fiscal year. Diluted net loss per share is computed by dividing net loss by the weighted-average number of dilutive common shares outstanding during the fiscal year. Dilutive shares outstanding are calculated by adding to the weighted shares outstanding any common stock equivalents from outstanding stock options and warrants based on the treasury stock method. In fiscal years when net income is reported, the calculation of diluted net income per share typically results in lower earnings per share than is calculated using the basic method. In fiscal years when a net loss is reported, such as the fiscal years ended June 30, 2004, 2005 and 2006, these potential shares from stock options and warrants are not included in the calculation because they would have an anti-dilutive effect, meaning the loss per share would be reduced. Therefore, in fiscal years when a loss is reported, the calculation of basic and diluted net loss per share results in the same value.

For the fiscal years ended June 30, 2004, 2005 and 2006, the basic and diluted net loss per share were based on weighted-average shares of 11,737,265, 14,282,643, and 15,997,419, respectively. The number of anti-dilutive shares excluded from the calculation of diluted net loss per share is as follows:

	Years Ended June 30,		
	2004	2005	2006
Outstanding securities not included in diluted net loss per share calculation			
Preferred stock (as if converted)	25,186,285	25,186,285	25,186,285
Options to purchase common stock	5,230,102	5,641,864	7,225,143
Warrants	1,383,675	428,157	451,353
	31,800,062	31,256,306	32,862,781

Pro forma net loss per share assuming conversion of preferred stock and an outstanding warrant for the fiscal year ended June 30, 2006 was as follows (in thousands, except share amounts):

	June 30, 2006
Historical	
Numerator:	
Net loss	$ (33,694)
Denominator:	
Weighted-average shares of common stock outstanding used in computing basic and diluted net loss per share:	15,997,419
Basic and diluted net loss per share:	$ (2.11)
Pro forma (unaudited)	
Net loss:	$ (33,694)
Denominator for pro forma basic and diluted net loss per share:	
Shares used above:	15,997,419
Pro forma adjustments to reflect assumed conversion of preferred stock and exercise of a warrant from the date of issuance:	25,711,285
Shares used to compute pro forma basic and diluted net loss per common share:	41,708,704
Pro forma basic and diluted net loss per share:	$ (0.81)

Income Taxes

Deferred tax assets and liabilities are determined based on the differences between financial reporting and tax bases of assets and liabilities, using tax rates expected to be in effect when the differences will reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Comprehensive Loss

Comprehensive loss is defined as the change in equity from transactions and other events and circumstances other than those resulting from investments by owners and distributions to owners. For the years ended June 30, 2004, 2005 and 2006, the Company recorded comprehensive losses of $11,703,000, $25,202,000 and $33,674,000, respectively. Comprehensive loss is comprised of net loss and the cumulative translation adjustment arising upon consolidation of the Company's foreign subsidiaries.

Segment Information

The Company has determined that it operates in only one segment in accordance with SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information* ("SFAS 131") as it only reports profit and loss information on an aggregate basis to its chief operating decision maker. The Company's long-lived assets maintained outside the United States are insignificant.

The following summarizes revenue by geographic region (in thousands):

	Years Ended June 30,		
	2004	2005	2006
United States	$ 12,893	$ 14,295	$ 40,826
Europe	4,338	464	3,390
Asia (except Japan)	2,338	2,707	3,058
Japan	—	4,911	5,623
Total	$ 19,569	$ 22,377	$ 52,897

Recent Accounting Pronouncements

In May 2005, the Financial Accounting Standards Board ("FASB") issued SFAS No. 154, *Accounting Changes and Error Corrections* ("SFAS 154"). SFAS 154 replaces Accounting Principles Board ("APB") Opinion No. 20 ("APB 20") and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*, and applies to all voluntary changes in accounting principle, and changes the requirements for accounting for and reporting of a change in accounting principle. APB 20 previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of change the cumulative effect of changing to the new accounting principle whereas SFAS 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. SFAS 154 enhances the consistency of financial information between periods. SFAS 154 will be effective in fiscal years beginning after December 15, 2005. Early adoption is permitted. The Company does not expect that the adoption of SFAS 154 will have a material impact on its results of operations or financial position.

In December 2004, the FASB issued a Statement, *Share-Based Payment, an amendment of FASB Statements Nos. 123 and 95* ("SFAS 123R") that addresses the accounting for share-based payment transactions in which a company receives employee services in exchange for either equity instruments of the company or liabilities that are based on the fair value of the company's equity instruments or that may be settled by the issuance of such equity instruments. The statement eliminates the ability to account for share-based compensation transactions using the intrinsic value method and generally requires that such transactions be accounted for using a fair-value-based method and recognized as expense in the consolidated statements of operations. The effective date of the new standard is as of the beginning of the annual reporting periods that start after December 15, 2005, which will be fiscal year 2007 for the Company.

The Company plans to adopt SFAS 123R using the modified prospective method, under which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted or modified after the effective date and (b) based on the previous requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The amounts disclosed within our footnotes are not necessarily indicative of the amounts that will be expensed upon the adoption of SFAS 123R. Compensation expense calculated under SFAS 123R may differ from the amounts currently disclosed within our footnotes based on changes in the fair value of our common stock, changes in the number of options granted or the terms of such options, the treatment of tax benefits and changes in interest rates or other factors. Upon adoption of SFAS 123R, the Company plans to use the Black-Scholes model to value the compensation expense associated with employee stock options and stock purchases under its employee stock purchase plan.

The Company expects this standard will not have a significant impact on the consolidated statements of operations and consolidated statements of cash flows. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as cash flow from financing activities, rather than as cash flow from operations as required under SFAS 123. This requirement will reduce net cash flows from operations and increase net cash flows from financing activities in periods after adoption to the extent that such excess tax benefits are realized. The Company cannot estimate what those amounts will be in the future.

In March 2005, the SEC issued Staff Accounting Bulletin ("SAB") No. 107 regarding the Staff's interpretation of SFAS 123R. This interpretation provides the Staff's views regarding interactions between SFAS 123R and certain SEC rules and regulations and provides interpretations of the valuation of share-based payments for public companies. The interpretive guidance is intended to assist companies in applying the provisions of SFAS 123R and investors and users of the financial statements in analyzing the information provided. The Company will follow the guidance prescribed in SAB 107 in connection with its adoption of SFAS 123R.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). This interpretation clarifies the accounting for uncertainty in income taxes recognized in the financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company has not yet determined the impact that adoption of this standard will have on its consolidated financial statements.

3. Balance Sheet Components

Accounts Receivable, Net

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

	June 30,	
	2005	2006
Accounts receivable	$ 4,719	$ 10,866
Unbilled fees and services	413	852
	5,132	11,718
Less: Allowance for doubtful accounts	(45)	(20)
	$ 5,087	$ 11,698

Inventories

Inventories consist of the following (in thousands):

	June 30,	
	2005	2006
Raw materials	$ 2,640	$ 4,447
Work-in-process	2,225	1,559
Finished goods	1,506	4,094
	$ 6,371	$ 10,100

Property and Equipment

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

	June 30,	
	2005	2006
Furniture and fixtures	$ 670	$ 1,038
Computer and office equipment	2,750	4,271
Leasehold improvements	2,316	6,325
Machinery and equipment	5,861	8,313
CyberKnife shared ownership systems	8,204	12,380
	19,801	32,327
Less: Accumulated depreciation and amortization	(6,840)	(10,382)
Property and equipment, net	$ 12,961	$ 21,945

Depreciation and amortization expense related to property and equipment for the years ended June 30, 2004, 2005 and 2006 was $1,450,000, $1,958,000 and $3,564,000, respectively. Accumulated depreciation related to the CyberKnife systems attributable to the shared ownership programs for the years ended June 30, 2005 and 2006 was $1,273,000 and $2,327,000, respectively.

Under the terms of the shared ownership programs, the Company retains title to its CyberKnife system, while the customer has use of the product. The Company generally receives a minimum monthly payment and earns additional revenues from the customer based upon its use of the product.

Future minimum revenues under the shared ownership arrangements as of June 30, 2006 are as follows (in thousands):

Year ending June 30,	
2007	$ 2,653
2008	3,018
2009	2,568
2010	2,028
2011	1,242
2012 and thereafter	440
Total	$ 11,949

Total contingent revenues, included in shared ownership revenue, earned from the CyberKnife systems attributable to the shared ownership programs were approximately $3,966,000, $6,739,000 and $6,090,000 for the years ended June 30, 2004, 2005 and 2006, respectively.

4. Business Combination

On January 10, 2005, the Company completed the purchase of the High Energy Systems Division ("HES") of American Science and Engineering, Inc. ("AS&E") and integrated this operation into the Company's existing manufacturing operation. HES had been the sole source manufacturer of the linear accelerator used in the CyberKnife system. The transaction was accounted for in accordance with SFAS 141, *Business Combinations*, ("SFAS 141") but lacked the materiality to be incorporated into the accompanying financial statements for presented periods prior to the acquisition date. The transaction was valued at approximately $8,413,000 and the consideration was comprised of $5,500,000 in cash, a note payable for $2,800,000 due one year after closing, and expenses related to the transaction. The total purchase cost of HES was as follows (in thousands):

Net tangible assets	$ 2,108
Goodwill and other purchased intangible assets:	
Complete technology	1,740
Customer contract / relationship	70
Goodwill	4,495
Total purchase price	$ 8,413

The Company allocated the purchase price based on the fair value of the net tangible and intangible assets acquired. Tangible assets were valued at carrying costs, subsequent to due diligence supporting those costs. The fair value of the intangible assets acquired was determined through

valuation by a third-party valuation firm as a basis for the allocation of the purchase price to those assets in accordance with SFAS 141. The purchase price was settled as follows (in thousands):

Cash	$ 5,500
Note payable	2,800
Transaction costs and expenses	113
Total	$ 8,413

Pro forma information has not been presented as the pro forma impact is immaterial.

5. Goodwill and Other Purchased Intangibles

Goodwill and other intangible assets with indefinite lives are not amortized in accordance with SFAS 142, *Goodwill and Other Intangible Assets* ("SFAS 142"). Intangible assets with determinable useful lives are amortized on a straight line basis over their useful lives. Goodwill and other intangible assets have resulted from the Company's January 2005 acquisition of HES. SFAS 142 requires that the Company perform an annual test for impairment of intangible assets with indefinite lives, and interim tests if indications of potential impairment exist. The Company performed the annual test for impairment in December 2005 concluding that there was no impairment of goodwill. At June 30, 2006, there have been no indicators indicating a need to perform an interim test.

The amortization expense relating to intangible assets for the periods ending June 30, 2004, 2005 and 2006 was $0, $122,000 and $242,000, respectively. The following represents the gross carrying amounts and accumulated amortization of amortized intangible assets at June 30, 2005 and 2006 (in thousands):

	June 30, 2005	June 30, 2006
Complete technology	$ 1,740	$ 1,740
Customer contract / relationship	70	70
	1,810	1,810
Less: Accumulated amortization	(122)	(364)
Intangible assets, net	$ 1,688	$ 1,446

The following table represents the estimated useful life of the intangible assets subject to amortization:

	Years
Amortized intangible assets:	
Complete technology	7.0
Customer contract / relationship	7.0

The estimated future amortization expense of purchased intangible assets as of June 30, 2006, is as follows (in thousands):

Year ending June 30,	
2007	$ 259
2008	259
2009	259
2010	259
2011	259
2012 and thereafter	151
Total	$ 1,446

6. Debt

During the year ended June 30, 2003, the Company entered into a loan agreement with a shared ownership program customer. Under the terms of the agreement, the Company received $1,500,000 in exchange for a note payable. The principal balance on the note carried interest at a rate of 7.5% per annum. A portion of the monthly payments received by the Company under the terms of the shared ownership program was first applied to the note payable. The note was secured by the CyberKnife system operated by the customer. The note was repaid in full in March 2005.

In January 2004, the Company entered into a financing agreement with a commercial bank. Under the terms of the agreement, the Company could offer domestic and export accounts receivable to the bank in exchange for advances up to an amount not to exceed $2,500,000. Amounts advanced under the agreement carried interest at a rate of 9.6% per annum. The term of the arrangement was for twelve months following the effective date. Collateral for amounts advanced consisted of the Company's rights, title and interest in all goods and equipment, inventory, contract rights, general intangibles, and cash. At June 30, 2005 and 2006 advances against the financing arrangement were zero. The agreement terminated in January 2005.

In conjunction with its acquisition of HES, the Company executed a promissory note in the principal amount of $2,800,000 as part of the purchase price. The note carried an interest rate of 7%, simple interest. The note, together with accrued and unpaid interest, was payable on the earlier of consummation of an initial public offering of the Company's common stock, or January 10, 2006. The note was repaid in full in January 2006.

7. Service Plan Contracts

Service contract revenue for providing parts, warranty, product updates and customer support is deferred and recognized ratably over the contractual service period, generally one year, until no further obligation exists.

Deferred service contract revenue included in deferred revenue was (in thousands):

Balance at June 30, 2003	$	1,883
Add payments received		5,218
Less revenue recognized		(1,098)
Balance at June 30, 2004		6,003
Add payments received		8,890
Less revenue recognized		(2,573)
Balance at June 30, 2005		12,320
Add payments received		20,419
Less revenue recognized		(3,635)
Balance at June 30, 2006	$	29,104

Costs incurred under service contracts included in cost of revenue were $970,000, $851,000 and $1,691,000 during the years ended June 30, 2004, 2005 and 2006, respectively.

8. Commitments and Contingencies

Operating Lease Agreements

The Company leases office space under non-cancellable operating leases with various expiration dates through June 2011. Rent expense was $458,000, $964,000 and $1,956,000 for the years ended June 30, 2004, 2005 and 2006, respectively. The terms of the facility leases provide for rental payments on a graduated scale. The Company recognizes rent expense on a straight-line basis over the lease period, and has accrued for rent expense incurred but not paid.

Future minimum lease payments under noncancelable operating lease agreements as of June 30, 2006 are as follows (in thousands):

Year ending June 30,		
2007	$	1,984
2008		1,738
2009		1,228
2010		1,057
2011		708
Total	$	6,715

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 lease agreement 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, the Company has not incurred claims or costs to defend lawsuits or settle claims related to these indemnification agreements.

Royalty Agreements

The Company entered into a license and royalty agreement with Schonberg Research Corporation ("Schonberg") in January 1991 in exchange for an exclusive license to use certain technology. Under the terms of the agreement, as amended in April 1996, the Company is obligated to pay Schonberg $25,000 for each CyberKnife system sold that includes the licensed technology. Maximum total aggregate payments under this license agreement are $2,500,000. Royalty expense recognized in cost of revenue or deferred revenue sold under this agreement was $250,000, $375,00 and $850,000 during the years ended June 30, 2004, 2005 and 2006, respectively. At June 30, 2006, the Company had a remaining commitment of approximately $169,000 related to this license and royalty agreement. At June 30, 2005 and 2006, the Company had accrued amounts of $119,000 and $219,000, respectively, included in other accrued liabilities in the consolidated balance sheets relating to this license and royalty agreement.

In July 1997, the Company entered into a license and royalty agreement with Stanford University ("Stanford") under which the Company has a non-exclusive license to use certain technology. Under this agreement, the Company is obligated to pay Stanford up to $10,000 for each CyberKnife system sold that includes the licensed technology, with the stipulation that the Company must make minimum annual payments of $25,000. Royalty expense recorded in cost of revenue or deferred cost of revenue was $55,000, $80,000 and $175,000 for the years ended June 30, 2004, 2005 and 2006, respectively.

In January 1999, the Company entered into a license and royalty agreement with Professor Dr. Achim Schweikard ("Schweikard") of the University of Munich. Under this agreement, the Company has a non-exclusive license to use certain technology. The Company is obligated to pay Schweikard up to $5,000 for each CyberKnife system sold that includes the licensed technology, with the stipulation that the Company must make miniumum annual payments of $5,000. Royalty expense under this agreement recorded in cost of revenue or deferred cost of revenue was $30,000, $115,000 and $120,000 for the years ended June 30, 2004, 2005 and 2006, respectively.

Other Commitments

During November 1999, in connection with the amendment of a purchase and distribution agreement, the Company committed to pay another party 50% of the amount by which the sale price of the next CyberKnife system sold in the United States exceeded $1,500,000. The Company also committed to pay the other party $50,000 each time the Company receives final payment for each of the next fourteen CyberKnife systems sold in the United States. The Company paid $250,000 and $350,000 to the other party in connection with sales to third parties occurring in the years ended June 30, 2005 and June 30, 2004, respectively. At June 30, 2006, the Company had no outstanding commitments regarding this amended agreement.

Contingencies

From time to time, the Company may become involved in litigation relating to claims arising from the ordinary course of business. Management does not believe the final disposition of these matters will

have a material adverse effect on the financial position, results of operations or future cash flows of the Company.

Software License Indemnity

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

9. Redeemable Convertible Preferred Stock

Redeemable Convertible Preferred Stock

As of June 30, 2004, 2005 and 2006, the Company had redeemable convertible preferred stock outstanding, as follows (in thousands):

	June 30,		
	2004	2005	2006
Authorized shares	30,000	30,000	30,000
Outstanding shares:			
Series C	11,182	11,182	11,182
Series A	4,500	4,500	4,500
Series A1	1,071	1,071	1,071
Series B	667	667	667
Total outstanding shares	17,419	17,419	17,419
Liquidation amount:			
Series C	$ 16,069	$ 19,285	$ 23,142
Series A	9,000	9,000	9,000
Series A1	3,212	3,212	3,212
Series B	5,000	5,000	5,000
Total liquidation amount	$ 33,281	$ 36,497	$ 40,354
Proceeds, net of issuance costs			
Series C	$ 11,044	$ 11,044	$ 11,044
Series A	8,621	8,621	8,621
Series A1	3,212	3,212	3,212
Series B	4,627	4,627	4,627
Total proceeds, net of issuance costs	$ 27,504	$ 27,504	$ 27,504

Dividend Rights

The holders of the Company's Series A, A1 and B preferred stock are entitled to receive cash dividends in preference to the holders of the Company's common stock, at the rate of 10% per year of the outstanding liquidation preference amounts. The holders of Series C preferred stock are entitled to receive dividends at a rate of 8% of the purchase price per annum in preference to the holders of the Company's Series A, A1 and B preferred stock and common stock. Such dividends shall be payable only when funds are legally available and only if, as and when declared by the Company's Board of Directors, and are non-cumulative. As of June 30, 2006, no dividends have been declared.

Liquidation Rights

Upon any liquidation, dissolution or winding up of the Company, the holders of Series C preferred stock shall be entitled to an amount equal to a 20% annual internal rate of return on the original issue price per share of Series C preferred stock (which is $1.00) plus an amount equal to any dividends

declared but unpaid thereon, if any, in preference to any distribution to Series A, A1, Series B or common stock (collectively referred to as "junior stock").

If the assets of the Company are insufficient to pay the full Series C liquidation preference amounts, then the available assets of the Company shall be distributed ratably among the holders of the Series C preferred stock.

After the holders of Series C preferred stock have been paid the amounts to which they shall be entitled, the holders of Series A, A1 and B preferred stock shall be entitled to receive a liquidation preference amount equal to the liquidation value per share multiplied by the number of shares outstanding. The liquidation value of each share of Series A, A1 and B preferred stock is defined as the price paid per share. In February 1999, 4,500,000 shares of Series A preferred stock were issued at a price of $2.00 per share, in December 1999 and January 2000, 1,070,666 shares of Series A1 preferred stock were issued at a price of $3.00 per share, and in March 2001, 666,665 shares of Series B preferred stock were issued at a price of $7.50 per share.

If the assets of the Company are insufficient to pay the Series A, A1 and B liquidation preference amounts, the available assets shall be distributed to the holders of Series A, A1 and B preferred stock ratably in proportion to the preference amounts they would otherwise be entitled to receive. After payment of the liquidation preference amounts, any remaining assets of the Company shall be distributed ratably to the holders of the Company's common stock.

A consolidation or merger of the Company, or a sale of all or substantially all of its assets, shall be deemed to be a liquidation or winding up for purposes of the liquidation preference if: (i) the fair value of the per share consideration to be received by a holder of preferred stock pursuant to any of the above-mentioned transactions is less than the purchase price of the preferred stock plus accrued but unpaid dividends; and (ii) the existing stockholders of the Company hold less than 50% of the voting power of the successor or surviving corporation.

Voting Rights

The holders of preferred stock have voting rights equal to the holders of the Company's common stock. Each holder of preferred stock is entitled to the number of votes equal to the number of shares of common stock into which the shares of preferred stock are convertible.

Conversion Rights and Antidilution Provisions

The original terms of the Series A, A1, B and C preferred stock provide that each share of preferred stock is convertible into one share of the Company's common stock, subject to certain anti-dilution provisions. Such conversion shall occur at the option of the holder of such preferred share at any time or automatically upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, in which the gross cash proceeds to the Company are at least $5,000,000.

The conversion ratio of outstanding preferred stock, as well as its liquidation rights, shall be adjusted to prevent dilution in the event of any subdivision or combination of the Company's common

stock or any distribution by the Company of a stock dividend or stock split. The conversion ratio of preferred stock shall be adjusted to prevent dilution upon the Company's issuance, on or after the closing of an offering of common stock or common stock equivalents for a consideration per share which is less than the conversion value of the preferred stock, with the following exceptions: (i) the issuance of common stock or options to purchase common stock to employees, officers, directors or members of the Scientific Advisory Board, with the approval of the Board of Directors, at not less than fair value; (ii) the conversion of any outstanding preferred shares; and (iii) any dividend or distribution on any shares of such common or preferred stock or common stock equivalents described above.

During the years ended June 30, 2002 and 2003, the Company issued 6,000,000 and 5,182,000 shares, respectively, of Series C preferred stock at a price of $1.00 share. These issuances triggered certain anti-dilution rights of the existing Series A, A1 and B preferred stock. As a result of these triggers, the outstanding shares of Series A, A1 and B preferred stock will convert into 6,834,693, 2,169,606 and 4,999,986 shares of common stock, respectively, at June 30, 2006.

The deemed liquidation provisions and the extent of the preferred stockholding result in the preferred stock having redemption features that are not solely within the control of the Company and, accordingly, require disclosure of the preferred stock as temporary equity in accordance with EITF Topic D-98.

10. Stockholders' Equity (Deficiency)

Common Stock

As of June 30, 2005, the Company's amended Articles of Incorporation authorized the Company to issue 70,000,000 shares of common stock. As of June 30, 2006, 16,243,150 shares of common stock were issued and outstanding.

Stock Option Plans

In 1993, the Company's stockholders approved the 1993 Stock Option Plan (the "1993 Plan"). Under the 1993 Plan, the Board of Directors is authorized to grant options to purchase shares of common stock at fair value, as determined by the Board of Directors, to employees, directors and consultants.

In 1998, the Company's stockholders approved the 1998 Equity Incentive Plan (the "1998 Plan"). Under the 1998 Plan, the Board of Directors is authorized to grant options to purchase shares of common stock to employees, directors and consultants. As of June 30, 2006, the 1993 Plan continued to remain in effect along with the 1998 Plan.

Only employees are eligible to receive incentive stock options. Non-employees may be granted non-qualified options. The Board of Directors has the authority to set the exercise price of all options granted, subject to the exercise price of incentive stock options being no less than 100% of the fair value, as determined by the Board of Directors, of a share of common stock on the date of grant; and no less than 85% of the fair value for a non-qualified stock options.

Generally, the Company's outstanding options vest at a rate of 25% per year. However, certain options granted to certain employees vest based upon performance. Continued vesting typically terminates when the employment or consulting relationship ends.

The maximum term of the options granted to persons who owned at least 10% of the voting power of all outstanding stock on the date of grant is 5 years. The maximum term of all other options is 10 years.

Combined activity under the 1993 Plan and the 1998 Plan (the "Plans") is summarized as follows:

		Options outstanding	
	Shares available for grant	Number of options	Weighted average exercise price
Balance at June 30, 2003	1,160,017	6,026,650	$ 0.66
Additional shares reserved	3,152,402	—	$ —
Plan shares expired	(50,000)	—	$ —
Options granted	(3,727,500)	3,727,500	$ 1.06
Options canceled	519,992	(519,992)	$ 1.04
Options exercised	—	(610,739)	$ 0.41
Balance at June 30, 2004	1,054,911	8,623,419	$ 0.82
Additional shares reserved	2,200,000	—	$ —
Options granted	(3,589,500)	3,589,500	$ 3.26
Options canceled	425,371	(425,371)	$ 1.24
Options exercised	—	(1,290,154)	$ 0.58
Balance at June 30, 2005	90,782	10,497,394	$ 1.67
Additional shares reserved	2,900,000	—	$ —
Options granted	(1,407,883)	1,407,883	$ 4.80
Options canceled	573,333	(573,333)	$ 2.15
Options exercised	—	(431,659)	$ 1.25
Balance at June 30, 2006	2,156,232	10,900,285	$ 2.07

The options outstanding and exercisable, by exercise price, at June 30, 2004 were as follows:

	Options outstanding			Options exercisable	
Exercise price	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price	Number of options	Weighted average exercise price
$0.25 – $0.60	1,100,000	3.90	$ 0.27	1,100,000	$ 0.27
$0.75	6,046,831	7.97	$ 0.75	3,008,818	$ 0.75
$0.85 – $3.00	1,472,188	9.62	$ 1.54	97,942	$ 2.08
$3.75	4,400	6.76	$ 3.75	4,400	$ 3.75
	8,623,419	7.73	$ 0.82	4,211,160	$ 0.66

The options outstanding and exercisable, by exercise price, at June 30, 2005 were as follows:

	Options outstanding			Options exercisable	
Exercise price	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price	Number of options	Weighted average exercise price
$0.25 – $0.40	605,000	2.86	$ 0.26	605,000	$ 0.26
$0.75	4,953,535	6.87	$ 0.75	3,394,116	$ 0.75
$0.85 – $3.00	2,252,959	8.82	$ 1.89	682,538	$ 1.74
$3.50 – $3.75	2,685,900	9.57	$ 3.50	62,026	$ 3.51
	10,497,394	7.75	$ 1.67	4,743,680	$ 0.87

The options outstanding and exercisable, by exercise price, at June 30, 2006 were as follows:

	Options outstanding			Options exercisable	
Exercise price	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price	Number of options	Weighted average exercise price
$0.25 – $0.40	535,000	1.86	$ 0.26	535,000	$ 0.26
$0.75	4,542,376	5.79	$ 0.75	3,989,593	$ 0.75
$0.85 – $3.00	1,861,313	7.78	$ 1.78	1,118,288	$ 1.73
$3.50 – $3.75	2,601,213	8.56	$ 3.50	1,000,547	$ 3.50
$3.76 – $6.73	1,360,383	9.38	$ 4.82	119,395	$ 4.42
	10,900,285	7.05	$ 2.07	6,762,823	$ 1.35

The weighted average fair values of options granted were $3.16, $4.45 and $5.53 per share for the years ended June 30, 2004, 2005 and 2006, respectively.

Warrants

During April 2000, in connection with an extension of a line of credit, the Company issued a warrant to purchase 1,000,000 shares of common stock at $3.00 per share to Pacific Republic. Using the Black-Scholes option pricing model, the Company estimated that the fair value of the warrants was $2,754,000 on the date of issue, with the following assumptions: fair value of a share of common stock equal to $3.90; term of 5 years; exercise price of $3.00; volatility of 75.0%; dividend rate of 0% and risk-free interest rate of 6.26%. The estimated fair value of the warrant was amortized to interest expense over the remaining term of the line of credit. During February 2002, in connection with an extension of Pacific Republic's line of credit to the Company and Series C financing, the Company reduced the exercise price of the 1,000,000 warrants from $3.00 per share to $1.40 per share. The Company measured the incremental fair value of the warrants at the date of modification, using the Black-Scholes option pricing model. The incremental value of $127,000 was recorded as interest expense during the year ended June 30, 2002. During March 2005, Pacific Republic exercised the warrants to purchase 1,000,000 shares of common stock at $1.40 per share.

During March 1999, in connection with a preferred stock financing, the Company issued a warrant to Pacific Republic to purchase 2,280,000 shares of common stock at $2.00 per share. Using the Black-Scholes option pricing model, the Company estimated that the fair value of these warrants was $369,000 on the date of issue. The estimated fair value of these warrants was recorded as an issuance cost against the proceeds of the preferred stock, with a corresponding credit to additional paid-in capital. During February 2002, in connection with an extension of Pacific Republic's line of credit to the Company and Series C financing, the Company reduced the exercise price of the 2,280,000 warrants from $2.00 per share to $1.40 per share. The Company measured the incremental fair value of the warrants at the date of modification, using the Black-Scholes option pricing model. The incremental value of $143,000 was recorded as interest expense during the year ended June 30, 2002. During March 2004, Pacific Republic exercised the warrants to purchase 2,280,000 shares of common stock at $1.40 per share.

In August 2002, in connection with the renegotiation of a contractual commitment with a distributor, the Company issued a warrant to purchase 525,000 shares of common stock at an exercise price of $1.00 per share. Using the Black-Scholes option pricing model, the Company estimated that the fair value of the warrant was $225,000 on the date of issue and recorded the warrant in additional paid in capital. Such warrant remains outstanding at June 30, 2006 and expires on August 8, 2007.

In connection with the Series B preferred stock financing in April 2001, the Company was obligated to issue up to 333,333 warrants to purchase common stock at a price per share of $10.00, based on the Company not meeting certain deadlines relating to an initial public offering of the Company's common stock. Using the Black-Scholes option pricing model, the Company estimated the fair value of the warrants to be $373,000 based on the following assumptions: fair value of a share of common stock equal to $3.00; term of 5 years; exercise price of $10.00; volatility of 75.0%; dividend rate of 0% and risk-free interest rate of 5.34%. The estimated fair value of the warrants was credited to additional paid-in capital with a corresponding debit to Series B preferred stock. During November 2005, warrants to purchase 16,666 shares of common stock were exercised, and the remaining 316,667 warrants expired unexercised in April 2006.

11. Income Taxes

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

	June 30,		
	2004	2005	2006
Current:			
Federal	$ —	$ —	$ 134
State	3	4	54
Foreign	—	64	70
Total current	3	68	258
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	—	—	—
Total deferred	—	—	—
Total provision	$ 3	$ 68	$ 258

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

	June 30,		
	2004	2005	2006
U.S. federal taxes (benefit):			
At federal statutory rate	$ (3,977)	$ (8,608)	$ (11,304)
State tax, net of federal benefit	(676)	(1,315)	(1,571)
Stock-based compensation expense	629	1,236	1,894
Change in valuation allowance	4,060	8,745	11,277
Credits	(132)	(408)	(437)
Change in state rate	—	256	—
Federal alternative minimum tax	—	—	134
Other	99	98	195
Foreign	—	64	70
Total	$ 3	$ 68	$ 258

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 deferred tax assets at June 30, 2005 and 2006 were as follows (in thousands):

	June 30,	
	2005	2006
Deferred tax assets:		
Federal and state net operating losses	$ 17,350	$ 14,853
Accrued vacation	318	603
Deferred revenue	9,265	17,969
Credits	2,142	2,579
Capitalized research and development	552	481
Other	3,265	7,223
Total deferred tax assets	32,892	43,708
Deferred tax liabilities:		
Fixed assets	(1,408)	(947)
Total deferred tax liabilities	(1,408)	(947)
Valuation allowance	(31,484)	(42,761)
Net deferred tax assets:	$ —	$ —

At June 30, 2006, the Company had approximately $40,623,000 in federal and $16,562,000 in state net operating loss carryforwards, which expire in varying amounts beginning in 2009 and 2007 for federal and state purposes, respectively. In addition, at June 30, 2006, the Company had federal and state research and development tax credits of approximately $1,541,000 and $1,347,000, respectively. The federal research credits will begin to expire in 2008 and the state research credits have no expiration date

Utilization of the Company's net operating loss may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation could result in the expiration of the net operating loss carryforwards before utilization.

The Company has established a 100% valuation allowance against its deferred tax assets due to the uncertainty surrounding the realization of such assets.

12. Other Income (Expense)

For the fiscal years ended June 30, 2004, 2005 and 2006, interest and other income consisted of the following (in thousands):

	Years Ended June 30,		
	2004	2005	2006
Interest income	$ 33	$ 198	$ 501
Gain (loss) on asset disposition	(27)	(18)	(44)
Foreign currency transaction gain (loss)	—	(26)	(21)
Other	7	2	2
	$ 13	$ 156	$ 438

	Years Ended June 30,		
	2004	2005	2006
Interest expense	$ (96)	$ (291)	$ (324)
State sales and local taxes	(52)	(88)	(23)
Other	(1)	(15)	(35)
	$ (149)	$ (394)	$ (382)

13. Related Party Transactions

During the years ended June 30, 2004, 2005 and 2006, the Company recognized revenue of $0, $7,106,000 and $5,624,000, respectively, relating to products and services provided to Meditec. Meditec's parent, Marubeni Corporation, is a preferred stockholder of the Company. At June 30, 2005 and 2006, amounts of $22,183,000 and $25,120,000, respectively, were recorded as deferred revenue and advances relating to payments made by Meditec for certain products and services. At June 30, 2005 and 2006, no amounts were due from Meditec.

During the years ended June 30, 2004, 2005 and 2006, the Company recognized revenue of $100,000, $585,000 and $195,000, respectively, relating to products and services provided to Stanford. The Company's former Chief Executive Officer was an active member of the faculty at Stanford. Currently, he is a member of the Company's Board of Directors and he holds the position of Professor of Neurosurgery and Radiation Oncology at Stanford. Advances and deferred revenue of $195,000 and $1,340,000 were recorded at June 30, 2005 and 2006, respectively, relating to payments made by Stanford. The Company also has a license agreement with Stanford as disclosed in Note 8. At June 30, 2005 and 2006, no amounts were due from Stanford.

During the years ended June 30, 2004, 2005 and 2006, the Company recognized revenue of $2,338,000, $2,590,000 and $130,000, respectively, relating to products and services provided to President Medical Technology Co. ("President"). President is related to President International Development Corporation, a preferred stockholder of the Company. At June 30, 2005 and 2006, amounts of $2,225,000 and $2,325,000, respectively, were recorded as deferred revenue and advances relating to payments made by President for certain products and services. At June 30, 2005 and 2006, amounts of $440,000 and $1,000, respectively, were recorded as trade accounts receivable from President.

14. Employee Benefit Plans

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 $201,000, $283,000 and $528,000 to the 401(k) Plan during the years ended June 30, 2004, 2005 and 2006, respectively.

15. Supplemental Disclosures

The following is supplemental disclosure of valuation and qualifying accounts (in thousands):

	Beginning Balance	Charges (Deductions) to Operations	Write-offs	Ending Balance
Accounts receivable allowances				
Year ended June 30, 2004	$ —	106	—	$ 106
Year ended June 30, 2005	$ 106	45	(106)	$ 45
Year ended June 30, 2006	$ 45	(21)	(4)	$ 20

Shares

ACCURAY INCORPORATED

Common Stock

PROSPECTUS

Through and including , 2006 (the 25th day after the date of this prospectus) federal securities law may require all dealers that effect transactions in these securities, whether or not participating in this offering, to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

JPMorgan **UBS Investment Bank**

Piper Jaffray

Jefferies & Company

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

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

Item	Amount
Securities and Exchange Commission Registration fee	$ 24,610
NASD filing fee	23,500
Initial NASDAQ Global Market listing fee	5,000
Legal fees and expenses	*
Accounting fees and expenses	*
Printing and engraving expenses	*
Transfer Agent and Registrar fees	*
Blue Sky fees and expenses	*
Miscellaneous Fees and Expenses	*
Total	$ *

* To be provided by amendment.

Item 14. Indemnification of Directors and Officers

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

Item 15. Recent Sales of Unregistered Securities

The Registrant was incorporated in California in 1990. Prior to the completion of this offering, the Registrant will reincorporate in Delaware and all of the stockholders of the California corporation will exchange all of their outstanding shares of common stock and preferred stock of the California corporation for newly issued shares of the Delaware corporation with equivalent rights and preferences. Each outstanding warrant and option to purchase shares of common stock of the California corporation will be convertible into corresponding warrants or options to purchase shares of common stock of the Delaware corporation.

From November 1, 2003 through the date of this registration statement, the Registrant has made sales of the following unregistered securities:

1. The Registrant sold an aggregate of 2,225,141 shares of common stock to employees, directors and consultants for consideration in the form of cash and forfeited shares in the aggregate amount of $8,239,723.01 upon the exercise of stock options and stock awards, 83,433 shares of which have been repurchased.

2. The Registrant granted stock options and stock awards to employees, directors and consultants under its 1998 Equity Incentive Plan covering an aggregate of 7,788,020 shares of common stock, with exercise prices ranging from $0.85 to $10.00 per share. Of these, options covering an aggregate of 744,052 were cancelled without being exercised.

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

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

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

Item 16. Exhibits and Financial Statements

(a) Exhibits

Exhibit No.	Description of Exhibit
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Articles of Incorporation of Registrant.
3.2*	Amended and Restated Certificate of Incorporation of Registrant, to be filed upon the completion of this offering.
3.3	Bylaws of Registrant.
3.4*	Bylaws of Registrant, to be in effect upon the completion of this offering.
4.1	Common Stock Warrant dated August 9, 2002 by and between Registrant and Hazem Chehabi, M.D.
4.2	Investor Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.
5.1*	Form of Opinion of Latham & Watkins LLP.
10.1	Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.
10.2	Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.
10.3	Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.
10.4	Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.
10.5*	Accuray Incorporated 2007 Incentive Award Plan and forms of agreements relating thereto.
10.6*	Accuray Incorporated Employee Stock Purchase Plan and forms of agreements relating thereto.
10.7	Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers.
10.8	Employment Terms Letter dated November 10, 2006 by and between Registrant and Euan S. Thomson, Ph.D.
10.9	Employment Terms Letter dated November 10, 2006 by and between Registrant and Chris A. Raanes.
10.10	Employment Terms Letter dated November 10, 2006 by and between Registrant and Robert E. McNamara.
10.11	Offer Letter dated July 22, 2004 by and between Registrant and John W. Allison, Ph.D.
10.12	Employment Terms Letter dated November 10, 2006 by and between Registrant and Eric Lindquist.

10.13	Employment Terms Letter dated November 10, 2006 by and between Registrant and Wade Hampton.
10.14	Independent Contractor Agreement effective as of April 1, 2006 by and between Registrant and John R. Adler, as amended effective as of May 24, 2006.
10.15	Independent Contractor Agreement effective as of April 1, 2006 by and between the CyberKnife Society and John R. Adler, as amended effective as of October 3, 2006.
10.16	License Agreement effective as of December 12, 2004 by and between Registrant and American Science and Engineering, Inc.
10.17	Assignment & Assumption of License and Consent by Supplier effective as of January 10, 2005 by and among Registrant, American Science and Engineering, Inc., Yuri Batygin, and Anatoliy Zapreier.
10.18†	Nonexclusive End-User Software License Agreement dated September 9, 2005 by and between Registrant and The Regents of the University of California.
10.19†	License Agreement effective as of July 9, 1997 by and between Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.20†	Manufacturing License and Technology Transfer Agreement effective as of January 28, 1991 by and between Registrant and Schonberg Radiation Corporation, as amended on April 15, 1996 and November 11, 2002.
10.21*†	Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.
10.22†	Consulting Agreement effective as of March 11, 2004 by and between Registrant and Forte Automation Systems, Inc.
10.23†	Amended and Restated International Distributor Agreement effective as of April 1, 2004 by and between Registrant and President Medical Technologies Co., Ltd. Inc.
10.24†	Commission Agreement effective as of August 10, 2006 by and between Registrant and President Medical Technologies Co., Ltd. Inc.
10.25*	Assignment Agreement effective as of December 29, 2004 by and between President Medical Technologies Co., Ltd. Inc. and Cowealth Medical Science & Biotechnology Incorporated.
10.26†	International Distributor Agreement dated January 21, 2004 by and between Registrant and Chiyoda Technol Corporation.
10.27	Form of Training Center Agreement.
10.28	Form International of Distributor Agreement.
10.29	Form of Sales Agent Agreement.
10.30	Form of CyberKnife G4 Purchase Agreement.
10.31	Form of Diamond Elite Service Agreement.
10.32	Form of Emerald Elite Service Agreement.
10.33	Form of Emerald Basic Service Agreement.
10.34	Form of International Ruby Elite Service Agreement.
10.35	Form of International Diamond Elite Service Agreement.

10.36	Form of International Emerald Elite Service Agreement.
10.37	Form of Platinum Elite Service Agreement.
10.38	Form of Silver Elite Service Agreement.
10.39	Form of International Platinum Elite Service Agreement.
10.40	Form of International Gold Elite Service Agreement.
10.41	Form of International Silver Elite Service Agreement.
10.42	Form of CyberKnife G4 Shared Ownership Agreement.
10.43	Form of CyberKnife G4 Placement Agreement.
10.44	Separation Agreement and Release effective as of April 14, 2006 by and between Registrant and John W. Allison, Ph.D.
21.1	List of subsidiaries.
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
23.2	Consent of Grant Thornton LLP, independent registered public accounting firm.
24.1	Power of Attorney (see page II-7).

* To be filed by amendment. All other exhibits are filed herewith.

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

(b) Financial Statement Schedules

None.

Item 17. Undertakings

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

The undersigned registrant hereby undertakes that:

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

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement

relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

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

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

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

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

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, we have duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sunnyvale, State of California, on the 13th day of November 2006.

ACCURAY INCORPORATED

By: /s/ E. S. THOMSON

Euan S. Thomson, Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Euan S. Thomson, Ph.D. and Robert E. McNamara, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement (including any registration statement filed by a corporation that is a successor to Accuray Incorporated by merger) and to sign any registration statement for the same offering covered by the Registration Statement that is to be effective upon filing pursuant to Rule 462 promulgated under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ E. S. THOMSON Euan S. Thomson, Ph.D	President and Chief Executive Officer and Director (principal executive officer)	November 13, 2006
/s/ R. E. MCNAMARA Robert E. McNamara	Senior Vice President, Chief Financial Officer (principal financial and accounting officer)	November 13, 2006
/s/ WAYNE WU Wayne Wu	Chairman of the Board and Director	November 13, 2006

/s/ JOHN R. ADLER, JR. M.D. John R. Adler, Jr., M.D.	Director	November 13, 2006
/s/ TED T. C. TU Ted T. C. Tu	Director	November 13, 2006
/s/ RODERICK A. YOUNG Roderick A. Young	Director	November 13, 2006
/s/ LI YU Li Yu	Director	November 13, 2006

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Articles of Incorporation of Registrant.
3.2*	Amended and Restated Certificate of Incorporation of Registrant, to be filed upon the completion of this offering.
3.3	Bylaws of Registrant.
3.4*	Bylaws of Registrant, to be in effect upon the completion of this offering.
4.1	Common Stock Warrant dated August 9, 2002 by and between Registrant and Hazem Chehabi, M.D.
4.2	Investor Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.
5.1*	Form of Opinion of Latham & Watkins LLP.
10.1	Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.
10.2	Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.
10.3	Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.
10.4	Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.
10.5*	Accuray Incorporated 2007 Incentive Award Plan and forms of agreements relating thereto.
10.6*	Accuray Incorporated Employee Stock Purchase Plan and forms of agreements relating thereto.
10.7	Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers.
10.8	Employment Terms Letter dated November 10, 2006 by and between Registrant and Euan S. Thomson, Ph.D.
10.9	Employment Terms Letter dated November 10, 2006 by and between Registrant and Chris A. Raanes.
10.10	Employment Terms Letter dated November 10, 2006 by and between Registrant and Robert E. McNamara.
10.11	Offer Letter dated July 22, 2004 by and between Registrant and John W. Allison, Ph.D.
10.12	Employment Terms Letter dated November 10, 2006 by and between Registrant and Eric Lindquist.
10.13	Employment Terms Letter dated November 10, 2006 by and between Registrant and Wade Hampton.
10.14	Independent Contractor Agreement effective as of April 1, 2006 by and between Registrant and John R. Adler, as amended effective as of May 24, 2006.

10.15	Independent Contractor Agreement effective as of April 1, 2006 by and between the CyberKnife Society and John R. Adler, as amended effective as of October 3, 2006.
10.16	License Agreement effective as of December 12, 2004 by and between Registrant and American Science and Engineering, Inc.
10.17	Assignment & Assumption of License and Consent by Supplier effective as of January 10, 2005 by and among Registrant, American Science and Engineering, Inc., Yuri Batygin, and Anatoliy Zapreier.
10.18†	Nonexclusive End-User Software License Agreement dated September 9, 2005 by and between Registrant and The Regents of the University of California.
10.19†	License Agreement effective as of July 9, 1997 by and between Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.20†	Manufacturing License and Technology Transfer Agreement effective as of January 28, 1991 by and between Registrant and Schonberg Radiation Corporation, as amended on April 15, 1996 and November 11, 2002.
10.21*†	Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.
10.22†	Consulting Agreement effective as of March 11, 2004 by and between Registrant and Forte Automation Systems, Inc.
10.23†	Amended and Restated International Distributor Agreement effective as of April 1, 2004 by and between Registrant and President Medical Technologies Co., Ltd. Inc.
10.24†	Commission Agreement effective as of August 10, 2006 by and between Registrant and President Medical Technologies Co., Ltd. Inc.
10.25*	Assignment Agreement effective as of December 29, 2004 by and between President Medical Technologies Co., Ltd. Inc. and Cowealth Medical Science & Biotechnology Incorporated.
10.26†	International Distributor Agreement dated January 21, 2004 by and between Registrant and Chiyoda Technol Corporation.
10.27	Form of Training Center Agreement.
10.28	Form of International Distributor Agreement.
10.29	Form of Sales Agent Agreement.
10.30	Form of CyberKnife G4 Purchase Agreement.
10.31	Form of Diamond Elite Service Agreement.
10.32	Form of Emerald Elite Service Agreement.
10.33	Form of Emerald Basic Service Agreement.
10.34	Form of International Ruby Elite Service Agreement.
10.35	Form of International Diamond Elite Service Agreement.
10.36	Form of International Emerald Elite Service Agreement.
10.37	Form of Platinum Elite Service Agreement.
10.38	Form of Silver Elite Service Agreement.
10.39	Form of International Platinum Elite Service Agreement.

10.40	Form of International Gold Elite Service Agreement.
10.41	Form of International Silver Elite Service Agreement.
10.42	Form of CyberKnife G4 Shared Ownership Agreement.
10.43	Form of CyberKnife G4 Placement Agreement.
10.44	Separation Agreement and Release effective as of April 14, 2006 by and between Registrant and John W. Allison, Ph.D.
21.1	List of subsidiaries.
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
23.2	Consent of Grant Thornton LLP, independent registered public accounting firm.
24.1	Power of Attorney (see page II-7).

* To be filed by amendment. All other exhibits are filed herewith.

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

QuickLinks

Exhibit 3.1

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
ACCURAY INCORPORATED.

Euan Thompson and **Robert McNamara** hereby certify that:

ONE: They are the duly elected and acting President and Assistant Secretary, respectively, of Accuray Incorporated, a California corporation (the "**Corporation**").

TWO: The Articles of Incorporation of this Corporation are amended and restated in their entirety to read as follows:

I.

The name of the Corporation is Accuray Incorporated.

II.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

This Corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares which the Corporation is authorized to issue is Eighty-Seven Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (87,419,331) shares, Seventy Million (70,000,000) shares of which shall be Common Stock (the "**Common Stock**"), and Seventeen Million Four Hundred Nineteen Thousand Three Hundred Thirty-One (17,419,331) shares of which shall be Preferred Stock (the "**Preferred Stock**"). None of such shares has any par value. Four Million Five Hundred Thousand (4,500,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series A Preferred**"), One Million One Hundred Seventy Thousand Six Hundred Sixty-Six (1,070,666) of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "**Series A-1 Preferred**"), Six Hundred Sixty-Six Thousand Six Hundred Sixty-Five (666,665) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "**Series B Preferred**") and Eleven Million One Hundred Eighty-Two Thousand (11,182,000) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "**Series C Preferred**"). The Series A Preferred, Series A-1 Preferred, Series B Preferred and the Series C Preferred are collectively referred to herein as the "**Series Preferred.**"

The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

Section 1. Dividend Rights.

(a) Holders of Series C Preferred, in preference to the holders of the Series A Preferred, Series A-1 Preferred and Series B Preferred (together, the "**Junior Preferred Stock**") and in preference to the holders of any other stock of the Corporation (the "**Junior Stock**"), shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds that are legally available therefor, non-cumulative cash dividends at the rate of eight percent (8%) of the "**Original Issue Price**" per annum on each outstanding share of Series C Preferred

(as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). In the event dividends are declared which pay in full the non-cumulative dividends on all Preferred Stock in a particular year, the Series C Preferred shall be entitled to share ratably in dividends, whether paid in cash, shares or otherwise, declared by the Corporation for the holders of Junior Preferred Stock and Junior Stock in excess of the total of all such non-cumulative dividends paid to holders of Preferred Stock on an as-if converted to Common Stock basis.

(b) After the full dividend preference for the holders of the Series C Preferred have been paid or declared as set apart for payment, but before payment of any dividends on the Junior Stock, the holders of Junior Preferred Stock, in preference to the holders of Junior Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of ten percent (10%) of the "**Original Issue Price**" per annum on each outstanding share of Junior Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares).

(c) The Original Issue Price of the Series A Preferred shall be two dollars ($2.00), the Original Issue Price of the Series A-1 Preferred shall be three dollars ($3.00), the Original Issue Price of the Series B Preferred shall be seven dollars and fifty cents ($7.50) and the Original Issue Price of the Series C Preferred shall be one dollar ($1.00). Such dividends shall be payable only when, as and if declared by the Board of Directors. Such dividends shall be non-cumulative and shall be paid on a pro-rata, pari passu basis in proportion to the respective dividend rates therefor.

(d) So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) and 1(b) above) on the Series C Preferred and the Junior Preferred Stock shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(d) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors. The holders of the Series Preferred expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to repurchase of shares upon termination of employment or service as a consultant or director.

Section 2. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Corporation and not as a separate class on all matters on which the Common Stock shall be entitled to vote, at any annual or special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series C Preferred.**

(i) In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series C Preferred shall be necessary for effecting or validating the following actions:

(A) any amendment, alteration, or repeal of any provision of the Articles of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Determination), that affects adversely the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series C Preferred;

(B) any authorization or any increase, whether by reclassification or otherwise, in the authorized amount of any class of shares or series of equity securities of the Corporation ranking senior to the Series C Preferred in liquidation preference, voting or dividends;

(C) any redemption, purchase, repurchase, payment of dividends or other acquisitions or distributions with respect to Common Stock or Preferred Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(D) any transfer of material assets of the Corporation to any person other than a wholly-owned subsidiary of the Corporation; or

(E) any Asset Transfer or Acquisition (each as defined in Section 3(e)).

(c) **Election of Board of Directors.** The authorized size of the Corporation's Board of Directors shall be set by resolution of the Board. The holders of Series C Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Series C Director**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (ii) the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, as applicable, shall be entitled to elect the remaining members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

Section 3. Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of Series C Preferred shall be entitled to receive, prior and in preference to any distribution or payment of the assets of the Corporation legally available for distribution to the holders of the Junior Preferred Stock or any Junior Stock by reason of their ownership thereof, a per share amount equal to the sum of (i) the Original Issue Price of the Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), (ii) an amount equal to twenty percent (20%) of the Original Issue Price of the Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each 12-month period beginning on April 4, 2002, and (ii) all declared and unpaid dividends on such shares of Series C Preferred for each share of Series C Preferred held by them. If, upon any liquidation, distribution, or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series C Preferred of the liquidation preference set forth herein, then such assets shall be distributed pro rata among the holders of Series C Preferred at the time outstanding, in proportion to the aggregate

preferential amount each such holder would otherwise be entitled to receive pursuant to this Section 3(a).

(b) After the payment of the full liquidation preference of the Series C Preferred as set forth in Section 3(a) above, the holders of Junior Preferred Stock shall be entitled to receive, prior and in preference to any distribution or payment of the assets of the Corporation legally available for distribution to the holders of any Junior Stock by reason of their ownership thereof, an amount for each share of Junior Preferred Stock, equal to the sum of (i) the Original Issue Price of such series of Junior Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), and (ii) all declared and unpaid dividends on such shares of Junior Preferred Stock. If, upon any liquidation, distribution, or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Junior Preferred Stock of the liquidation preference set forth herein, then such assets shall be distributed pro rata among the holders of Junior Preferred Stock at the time outstanding, in proportion to the aggregate preferential amount each such holder would otherwise be entitled to receive pursuant to this Section 3(b).

(c) After the payment of the full liquidation preferences set forth in Sections 3(a)-(b) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed pro rata to the holders of Common Stock.

(d) The following events shall be considered a liquidation under Section 3:

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions other than a merger effected exclusively for the purpose of changing the domicile of the Corporation (an "**Acquisition**"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "**Asset Transfer**").

(e) If the consideration distributed by this Corporation in any liquidation, dissolution or winding up is other than cash, its value will be deemed its fair market value as determined in good faith by the Corporation's Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

(A) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate

discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(iii) This Corporation shall give each holder of record of the Series Preferred written notice of such impending transaction not less than ten (10) days prior to the shareholders' meeting called to approve such transaction.

Section 4. Conversion Rights.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock:

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A Preferred being converted. The number of shares of Common Stock to which a holder of Series A-1 Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A-1 Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A-1 Preferred being converted. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series B Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series B Preferred being converted. The number of shares of Common Stock to which a holder of Series C Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series C Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series C Preferred being converted.

(b) **Series Preferred Conversion Rate.**

(i) The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Conversion Price," calculated as provided in Section 4(c).

(ii) The conversion rate in effect at any time for conversion of the Series A-1 Preferred (the "**Series A-1 Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A-1 Preferred by the "Series A-1 Conversion Price," calculated as provided in Section 4(c).

(iii) The conversion rate in effect at any time for conversion of the Series B Preferred (the "**Series B Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the "Series B Conversion Price," calculated as provided in Section 4(c).

(iv) The conversion rate in effect at any time for conversion of the Series C Preferred (the "**Series C Conversion Rate**", together with the Series A Conversion Rate, the Series A-1 Conversion Rate and the Series B Conversion Rate, the "**Series Preferred Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series C Preferred by the "Series C Conversion Price," calculated as provided in Section 4(c).

(c) **Conversion Price.** The Series A Conversion Price shall initially be $1.316811. The Series A-1 Conversion Price shall initially be $1.480450. The Series B Conversion Price shall initially be $1.00. The Series C Conversion Price shall initially be $1.00. The Series A Conversion

Price, the Series A-1 Conversion Price, the Series B Conversion Price and the Series C Conversion Price (together the "**Series Preferred Conversion Price**") each shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) **Automatic Conversion.**

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Rate, upon the earlier to occur of (A) the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of the Series Preferred voting together as a single class on an as-converted to Common Stock basis, or (B) immediately prior to the closing of a firmly underwritten public offering of shares of Common Stock in which the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least $25,000,000 (a "**Qualified Public Offering**"). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(e) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Corporation's Board of Directors) on the date of conversion.

(f) **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted and shall state the name or names in which the certificate or certificates for shares of Common Stock are to be issued. In the event the automatic conversion pursuant to Section 4(d), the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. After receipt of the notice or after an automatic conversion in accordance with Section 4(d), the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant

to the Securities Act or an Acquisition or Asset Transfer, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction, in which event the holder entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction.

(g) **Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the filing of this Amended and Restated Articles of Incorporation (the "**Effective Date**") effect a subdivision of the outstanding Common Stock, the Series Preferred Conversion Price for each series of Series Preferred then in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock into a smaller number of shares, the Series Conversion Price for each series of Series Preferred then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(g) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(h) **Adjustment for Common Stock Dividends and Distributions.** If the Corporation at any time or from time to time after the Effective Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Price for each series then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series Preferred Conversion Price for each series of Series Preferred then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance on the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance on the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price for each series shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price for each series shall be adjusted pursuant to this Section 4(h) to reflect the actual payment of such dividend or distribution.

(i) **Adjustments for Other Dividends and Distributions.** If the Corporation at any time or from time to time after the Effective Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock, or Convertible Securities (as defined below) and other than as otherwise adjusted pursuant to Section 4), in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Corporation which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series Preferred or with respect to such other securities by their terms.

(j) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Effective Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset

Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(k) **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Effective Date, there is a capital reorganization of the Common Stock or a merger or consolidation of the Corporation with or into another corporation, or the sale of all of substantially all of the Corporation's assets to any other person (other than an Acquisition or Asset Transfer as defined in Section 3(c) or as recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), then as a part of such capital reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation or sale, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable. This Section 4(k) shall similarly apply to successive reorganizations, mergers, consolidations and sales.

(l) **Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time after the Effective Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (l) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in Section 4(h) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(g) above, for an Effective Price (as hereinafter defined) less than the then effective Series Preferred Conversion Price for each series, the then existing Series Preferred Conversion Price for such series shall be reduced, as of the opening of business on the date of such issue or sale,

(A) in the case of the Series A Preferred, Series A-1 Preferred and the Series C Preferred, to a price determined by multiplying the Series Preferred Conversion Price by a fraction (1) the numerator of which shall be (x) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (l)(ii)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (2) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued, or

(B) in the case of the Series B Preferred, to the price equal to the price paid per share for such Additional Shares of Common Stock.

For the purposes of this Section 4(l), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (X) the number of shares of Common Stock actually outstanding, (Y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (Z) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, and Convertible Securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(l), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(l), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") and if the Effective Price of such Additional Shares of Common Stock is less than the Series Conversion Price for any series, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or

options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4(l), whether or not subsequently reacquired or retired by the Corporation other than (A) shares of Common Stock issued upon conversion of the Series Preferred; (B) shares of Common Stock issued to employees, consultants or directors pursuant to incentive stock option plans approved by the Corporation's Board of Directors; (C) shares of Common Stock issued pursuant to the exercise of Convertible Securities outstanding as of the Effective Date; (D) shares of Common Stock issued as a dividend or distribution on Common Stock or Preferred Stock; (E) shares of Common Stock issued in connection with a Qualified Public Offering; or (F) shares of Common Stock that are otherwise excluded by vote or written consent of holders of at least a majority of the Series Preferred, voting as a single class on an as-converted to Common Stock basis. The "**Effective Price**" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Section 4(l), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 4(l), for such Additional Shares of Common Stock.

(m) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series Preferred Conversion Price for each series the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

(n) **Notices of Record Date.** Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are

entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3(c)) or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in Section 3(c)), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail, by first class mail, postage prepaid, to each holder of Series Preferred, at the address for such holder as shown on the books of the Corporation, at least ten (10) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(o) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(p) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

(q) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

Section 5. No Reissuance of Series Preferred. No share or shares of Series Preferred acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 6. No Preemptive Rights. Shareholders shall have no preemptive rights except as granted by the Corporation pursuant to written agreements.

Section 7. Redemption. The Series Preferred is not redeemable.

IV.

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions, agreements with agents, votes of shareholders or disinterested directors or any or all of the above, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability."

THREE: The foregoing amendment and restatement of the articles of incorporation has been duly approved by the Board of Directors of this Corporation.

FOUR: The foregoing amendment and restatement of the articles of incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The Corporation has two classes of stock outstanding and such classes of stock are entitled to vote with respect to the amendment herein set forth. The total number of outstanding shares of Common Stock of the Corporation is 16,269,238, the total number of outstanding shares of Series A Preferred is 4,500,000, the total number of outstanding shares of Series A-1 Preferred is 1,070,666, the total number of outstanding shares of Series B Preferred is 666,665 and the total number of outstanding shares of Series C Preferred is 11,182,000. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the outstanding shares of Common Stock and Preferred Stock, voting together on an as converted to Common Stock basis, more than fifty percent (50%) of the outstanding shares of Preferred Stock, voting as a separate class, and more than fifty percent (50%) of the outstanding shares of the Series C Preferred, in each case, voting separately as a single class.

The undersigned, Euan Thompson and Robert McNamara, the President and Assistant Secretary, respectively, of Accuray Incorporated, declare under penalty of perjury that the matters set out in the foregoing Certificate are true of their own knowledge.

Executed at Sunnyvale, California on October 18, 2006.

/s/ Euan Thomson

EUAN THOMSON, President

/s/ Robert McNamara

ROBERT MCNAMARA, Assistant Secretary

SIGNATURE PAGE TO AMENDED AND RESTATED ARTICLES OF INCORPORATION

QuickLinks

Exhibit 3.3

BY-LAWS

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ACCURAY INCORPORATED

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ACCURAY INCORPORATED

ARTICLE I.

OFFICES

Section 1.1 Principal Executive Office.

The principal executive office for the transaction of the business of the corporation is hereby fixed and located at 3300 Keller Street, Bldg. 101, City of Santa Clara, County of Santa Clara, State of California. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another.

Section 1.2 Other Offices.

Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where the corporation is qualified to do business.

ARTICLE II.

MEETINGS OF SHAREHOLDERS

Section 2.1 Place of Meetings.

All meetings of shareholders shall be held either at the principal executive office or at any other place within or without the State of California which may be designated either by the Board of Directors or by the written consent of a majority of the shareholders entitled to vote thereat as determined pursuant to Section 6.1 of these By-Laws given either before or after the meeting.

Section 2.2 Annual Meetings.

The annual meetings of shareholders shall be held on such day and at such hour as may be fixed by the Board of Directors. At such meeting, Directors shall be elected, and any other proper business may be transacted.

Section 2.3 Special Meetings.

Special meetings of the shareholders may be called at any time by the Board of Directors, the Chairman of the Board, the President, or by the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting. Notice of such special meeting shall be given in the same manner as for the annual meeting of shareholders. Notices of any special meetings shall specify in addition to the place, date and hour of such meeting, the general nature of the business to be transacted thereat.

Section 2.4 Notice of Meetings or Reports.

Written notice of each meeting of shareholders shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote thereat. Such notice shall be given either personally or by mail or other means of written communication, addressed or delivered to each shareholder entitled to vote at such meeting at the address of such shareholder appearing on the books of the corporation or given by him to the corporation for the purpose of such

notice. If no such address appears or is given, notice shall be given either personally or by mail or other means of written communication addressed to the shareholder at the place where the principal executive office of the corporation is located, or by publication at least once in a newspaper of general circulation in the county in which said office is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

The same procedure for the giving of notice shall apply to the giving of any report to shareholders.

All such notices shall state the place, the date and the hour of such meeting, and shall state such matters, if any, as may be expressly required by the California Corporations Code.

Upon request by any person or persons entitled to call a special meeting, the Chairman of the Board, President, Vice President or Secretary shall within twenty (20) days after receipt of the request cause notice to be given to the shareholders entitled to vote that a special meeting will be held at a time requested by the person or persons calling the meeting, but not less than thirty-five (35) nor more than sixty (60) days after receipt of the request.

All other notices shall be sent by the Secretary or an Assistant Secretary, or if there be no such officer, or in the case of his neglect or refusal to act, by any other officer, or by persons calling the meeting.

Section 2.5 Adjourned Meetings and Notice Thereof.

Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares, represented either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 2.7 of these By-Laws.

When a shareholders' meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken; except that if the adjournment is for more than forty-five (45) days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each shareholder of record entitled to vote thereat.

At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

Section 2.6 Voting.

Except as otherwise provided in the Articles of Incorporation and subject to Section 6.1 of these By-Laws, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders. Vote may be viva voce or by ballot; provided, however, that elections for directors must be by ballot upon demand made by a shareholder at the meeting and before the voting begins.

Every shareholder entitled to vote at any election for Directors may cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected, multiplied by the number of votes to which his shares are entitled, or to distribute his votes on the same principle among as many candidates as he thinks fit, provided that no shareholder shall be entitled to cumulate votes unless such candidate or candidates names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting, prior to the voting, of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given such notice, all shareholders may cumulate their votes for candidates in nomination. The candidates receiving the highest number of

votes of the shares entitled to be voted for them, up to the number of directors to be elected by such shares, shall be elected.

Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office, but, if the shareholder fails to specify the number of shares such shareholder is voting affirmatively, it shall be conclusively presumed that the shareholder's approving vote is with respect to all shares said shareholder is entitled to vote.

Section 2.7 Quorum.

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders. If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless otherwise required by the Articles of Incorporation.

The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 2.8 Consent of Absentees.

The transactions of any meeting of shareholders, if not duly called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the shareholders entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; provided, that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law or these By-Laws to be included in the notice but not so included if such objection is expressly made at the meeting.

Section 2.9 Action Without Meeting.

Any action which may be taken at any meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the actions so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted; provided, that except to fill a vacancy as provided in Section 3.6 of these By-Laws, Directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of Directors.

Unless the consents of all shareholders entitled to vote have been solicited in writing, notice of the following actions approved by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders entitled to vote who have not consented in writing at least ten (10) days before the consummation of the action authorized by such approval:

1. Approval of a contract or other transaction between the corporation and one or more of its Directors, or between the corporation and any corporation, firm or association in which one or more of its Directors has a material financial interest.

2. Approval of any indemnification to be made by the corporation of a person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person was or is an agent of the corporation.

3. Approval of the principal terms of a reorganization.

4. Approval of a plan of distribution of the shares, obligations or securities of any other corporation, or assets other than money, which is not in accordance with the liquidation rights of the preferred shares as specified in the Articles of Incorporation or a Certificate of Determination.

Unless the consents of all shareholders entitled to vote have been solicited in writing, prompt notice of the taking of any corporate action not listed above which is approved by shareholders without a meeting by less than unanimous written consent, shall be given to those shareholders entitled to vote who have not consented in writing.

Such notice shall be given as provided in Section 2.4 of these By-Laws.

Section 2.10 Proxies.

Every person entitled to vote shares may authorize another person or persons to act by proxy with respect to such shares. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy.

ARTICLE III.

DIRECTORS

Section 3.1 Powers.

Subject to the limitations stated in the Articles of Incorporation, these By-Laws, and the California Corporations Code as to actions which shall be approved by the shareholders or by the affirmative vote of a majority of the outstanding shares entitled to vote, and subject to the duties of Directors as prescribed by the California Corporations Code, all corporate powers shall be exercised by, or under the direction of, and the business and affairs of the corporation shall be managed by, the Board of Directors.

Section 3.2 Number of Directors.

The authorized number of Directors of the corporation shall be not less than four (4) nor more than six (6) and the exact number of Directors initially authorized shall be five (5). The exact number of Directors may be fixed within the limits specified in this Section 3.2 by a By-law duly adopted by the shareholders or by a resolution of the Board of Directors. The minimum or maximum number of Directors provided in this Section 3.2 may be changed or a definite number fixed without provision for an indefinite, by a By-law duly adopted by the affirmative vote of a majority of the outstanding shares entitled to vote.

Section 3.3 Election and Term of Office.

The Directors shall be elected at each annual meeting of shareholders, but if any such annual meeting is not held, or the Directors are not elected thereat, the Directors may be elected at any special meeting of the shareholders held for that purpose. All Directors shall hold office until the expiration of the term for which elected and until their respective successors are elected, except in the case of the death, resignation or removal of any Director. A Director need not be a shareholder.

Section 3.4 Resignation.

Any Director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 3.5 Removal.

The entire Board of Directors or any individual Director may be removed from office, prior to the expiration of their or his term of office only in the manner and within the limitations provided by the California Corporations Code.

No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of such Director's term of office.

Section 3.6 Vacancies.

A vacancy in the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any Director, or if the authorized number of Directors be increased, or if the shareholders fail at any annual or special meeting of shareholders at which any Director or Directors are elected to elect the full authorized number of Directors to be voted for at that meeting.

Vacancies in the Board of Directors may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director. Each Director so elected shall hold office until the expiration of the term for which he was elected and until his successor is elected at an annual or a special meeting of the shareholders, or until his death, resignation or removal.

The shareholders may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors. Any such election by written consent other than to fill a vacancy created by removal requires the consent of a majority of the outstanding shares entitled to vote. A Director may not be elected by written consent to fill a vacancy created by removal except by unanimous written consent of all shares entitled to vote for the election of directors.

Section 3.7 Organization Meeting.

Immediately after each annual meeting of shareholders, the Board of Directors shall hold a regular meeting for the purpose of organization, the election of officers and the transaction of other business. No notice of such meeting need be given.

Section 3.8 Other Regular Meetings.

The Board of Directors may provide by resolution the time and place for the holding of regular meetings of the Board; provided, however, that if the date so designated falls upon a legal holiday, then the meeting shall be held at the same time and place on the next succeeding day which is not a legal holiday. No notice of such regular meetings of the Board need be given.

Section 3.9 Calling Meetings.

Meetings of the Board of Directors for any purpose or purposes shall be held whenever called by the Chairman of the Board, the President or the Secretary or any two Directors of the corporation.

Section 3.10 Place of Meetings.

Meetings of the Board of Directors shall be held at any place within or without the State of California which may be designated in the notice of the meeting, or, if not stated in the notice or there

is no notice, designated by resolution of the Board. In the absence of such designation, meetings of the Board of Directors shall be held at the principal executive office of the corporation.

Section 3.11 Telephonic Meetings.

Members of the Board may participate in a regular or special meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting pursuant to this Section 3.11 constitutes presence in person at such meeting.

Section 3.12 Notice of Special Meetings.

Written notice of the time and place of special meetings of the Board of Directors shall be delivered personally to each Director, or sent to each Director by mail, telephone or telegraph. In case such notice is sent by mail, it shall be deposited in the United States mail at least four (4) days prior to the time of the holding of the meeting. In case such notice is delivered personally, or by telephone or telegraph, it shall be so delivered at least forty-eight (48) hours prior to the time of the holding of the meeting. Such notice may be given by the Secretary of the corporation or by the persons who called said meeting. Such notice need not specify the purpose of the meeting, and notice shall not be necessary if appropriate waivers, consents and/or approvals are filed in accordance with Section 3.13 of these By-Laws.

Section 3.13 Waiver of Notice.

Notice of a meeting need not be given to any Director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director.

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.14 Action Without Meeting.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors.

Section 3.15 Quorum.

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be the act of the Board of Directors, unless the Articles of Incorporation, or the California Corporations Code, specifically requires a greater number. In the absence of a quorum at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting as provided in Section 3.16 of these By-Laws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough Directors to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 3.16 Adjournment.

Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the Directors present. Notice of the time and place of the adjourned meeting need not be given to absent Directors if said time and place are fixed at the meeting adjourned.

Section 3.17 Inspection Rights.

Every Director shall have the absolute right at any time to inspect, copy and make extra copies of, in person or by agent or attorney, all books, records and documents of every kind and to inspect the physical properties of the corporation.

Section 3.18 Fees and Compensation.

Directors shall not receive any stated salary for their services as directors, but, by resolution of the Board, a fixed fee, with or without expenses of attendance, may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

ARTICLE IV.

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 4.1 Executive Committee.

The Board of Directors may, by resolution adopted by a majority of the authorized number of Directors, appoint an executive committee, consisting of two or more Directors. The Board may designate one or more Directors as an alternate member of such committee, who may replace any absent member of any meeting of the committee. The executive committee, subject to any limitations imposed by the California Corporations Code, or by resolution adopted by the affirmative vote of a majority of the authorized number of Directors, or imposed by the Articles of Incorporation or by these By-Laws, shall have and may exercise all of the powers of the Board of Directors.

Section 4.2 Other Committees.

The Board of Directors may, by resolution adopted by a majority of the authorized number of Directors, designate such other committees, each consisting of two or more Directors, as it may from time to time deem advisable to perform such general or special duties as may from time to time be delegated to any such committee by the Board of Directors, subject to the limitations contained in the California Corporations Code, or imposed by the Articles of Incorporation or by these By-Laws. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent member at any meeting of the committee.

Section 4.3 Minutes and Reports.

Each committee shall keep regular minutes of its proceedings, which shall be filed with the Secretary. All action by any committee shall be reported to the Board of Directors at the next meeting thereof, and, insofar as rights of third parties shall not be affected thereby, shall be subject to revision and alteration by the Board of Directors.

Section 4.4 Meetings.

Except as otherwise provided in these By-Laws or by resolution of the Board of Directors, each committee shall adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and shall meet as provided by such rules, and it shall also meet at the call of any member of the committee. Unless otherwise provided by such rules or by resolution of the Board of Directors, committee meetings shall be governed by Sections 3.11, 3.12 and 3.13 of these By-Laws.

Section 4.5 Term of Office of Committee Members.

The term of office of any committee member shall be as provided in the resolution of the Board of Directors designating him but shall not exceed his term as a Director. Any member of a committee may be removed at any time by resolution adopted by Directors holding a majority of the directorships, either present at a meeting of the Board or by written approval thereof.

ARTICLE V.

OFFICERS

Section 5.1 Officers.

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer, who shall be the Chief Financial Officer of the corporation. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more additional Vice Presidents, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 5.3. One person may hold two or more offices.

Section 5.2 Election.

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 and 5.5, shall be chosen annually by the Board of Directors and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 5.3 Subordinate Officers, etc.

The Board of Directors may appoint such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these By-Laws or as the Board of Directors may from time to time determine.

Section 5.4 Removal and Resignation.

Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by an officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.5 Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-Laws for regular appointments to such office.

Section 5.6 Chairman of the Board.

The Chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these By-Laws.

Section 5.7 President.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall be the general manager and chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and officers of the corporation. He shall preside at all meetings of the shareholders. He shall be ex officio a member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or by these By-Laws.

Section 5.8 Vice President.

In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or these By-Laws.

Section 5.9 Secretary.

The Secretary shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors, committees of the Board, and shareholders. Such minutes shall include all waivers of notice, consents to the holding of meetings, or approvals of the minutes of meetings executed pursuant to these By-Laws or the California Corporations Code. The Secretary shall keep, or cause to be kept at the principal executive office or at the office of the corporation's transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each.

The Secretary shall give or cause to be given, notice of all meetings of the shareholders and of the Board of Directors required by these By-Laws or by law to be given, and shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section 5.10 Treasurer and Chief Financial Officer.

The Treasurer and Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account in written form or any other form capable of being converted into written form.

The Treasurer and Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board of Directors. He shall disburse all funds of the corporation as may be ordered by the Board of Directors,

shall render to the President and Directors, whenever they request it, an account of all of his transactions as Treasurer and Chief Financial Officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these By-Laws.

Section 5.11 Assistant Secretary.

The Assistant Secretary shall have all the powers, and perform all the duties of, the Secretary in the absence or inability of the Secretary to act.

Section 5.12 Compensation.

The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a Director of the corporation.

ARTICLE VI.

MISCELLANEOUS

Section 6.1 Record Date.

The Board of Directors may fix, in advance, a time in the future as the record date for the determination of shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action. Shareholders on the record date are entitled to notice and to vote or receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares in the books of the corporation after the record date, except as otherwise provided by law. Said record date shall not be more than sixty (60) or less than ten (10) days prior to the date of such meeting, nor more than sixty (60) days prior to any other action.

A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting, but the Board shall fix a new record date if the meeting is adjourned for more than forty-five (45) days from the date set for the original meeting.

If no record date is fixed by the Board of Directors, the record date shall be fixed pursuant to the California Corporations Code.

Section 6.2 Inspection of Corporate Records.

The accounting books and records, and minutes of proceedings of the shareholders and the Board of Directors and committees of the Board shall be open to inspection upon written demand made upon the corporation by any shareholder or the holder of a voting trust certificate, at any reasonable time during usual business hours, for a purpose reasonably related to his interest as a shareholder, or as the holder of such voting trust certificate. The record of shareholders shall also be open to inspection by any shareholder or holder of a voting trust certificate at any time during usual business hours upon written demand on the corporation, for a purpose reasonably related to such holder's interest as a shareholder or holder of a voting trust certificate. Such inspection may be made in person or by an agent or attorney, and shall include the right to copy and to make extracts.

Section 6.3 Execution of Corporate Instruments.

The Board of Directors may, in its discretion, determine the method and designate the statutory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation. Unless otherwise specifically determined by the Board of Directors, formal contracts of the corporation, promissory notes, mortgages, evidences of indebtedness, conveyances or other instruments in writing, and any assignment or endorsement thereof, executed or entered into between the corporation and any person, may be signed by the Chairman of the Board, the President, any Vice President, the Secretary or the Treasurer of the corporation.

Section 6.4 Ratification by Shareholders.

The Board of Directors may, subject to applicable notice requirements, in its discretion, submit any contract or act for approval or ratification of the shareholders at any annual meeting of shareholders, or at any special meeting of shareholders called for that purpose; and any contract or act which shall be approved or ratified by the affirmative vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of shareholders, shall be as valid and binding upon the corporation and upon the shareholders thereof as though approved or ratified by each and every shareholder of the corporation, unless a greater vote is required by law for such purpose.

Section 6.5 Annual Report.

For so long as the corporation has less than 100 holders of record of its shares, the mandatory requirement of an annual report is hereby expressly waived. The Board of Directors may, in its discretion, cause an annual report to be sent to the shareholders. Such reports shall contain at least a balance sheet as of the close of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, and shall be accompanied by any report thereon of independent accountants, or if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit in the books and records of the corporation.

A shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of the corporation may make a written request to the corporation for an income statement and/or a balance sheet of the corporation for the three-month, six-month or nine-month period of the current fiscal year ended more than thirty (30) days prior to the date of the request, and such statement shall be delivered or mailed to the person making the request within thirty (30) days thereafter. Such statements shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificates of an authorized officer of the corporation that such financial statements were prepared without audit from the books and records of the corporation.

Section 6.6 Representation of Shares of Other Corporations.

The President and Vice President of this corporation are authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted to said officers to vote or represent on behalf of this corporation any and all shares held by this corporation and any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney and duly executed by said officers.

Section 6.7 Inspection of By-Laws.

The corporation shall keep in its principal executive office in this State the original or a copy of the By-Laws as amended or otherwise altered to date, which shall be open to inspection by the shareholders at all reasonable times during office hours.

ARTICLE VII.

SHARES OF STOCK

Section 7.1 Form of Certificates.

Certificates for shares of stock of the corporation shall be in such form and design as the Board of Directors shall determine and shall be signed in the name of the corporation by the Chairman of the Board, or the President or Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or any Assistant Secretary. Each certificate shall state the certificate number, the date of issuance, the number, class or series and the name of the record holder of the shares represented thereby, the name of the corporation, and, if the shares of the corporation are classified or if any class of shares has two or more series, there shall appear the statement required by the California Corporations Code.

Section 7.2 Transfer of Shares.

Shares of stock may be transferred in any manner permitted or provided by law. Before any transfer of stock is entered upon the books of the corporation, or any new certificate issued therefor, the older certificate, properly endorsed, shall be surrendered and cancelled, except when a certificate has been lost, stolen or destroyed.

Section 7.3 Lost Certificates.

The Board of Directors may order a new certificate for shares of stock to be issued in the place of any certificate alleged to have been lost, stolen or destroyed, but in every such case, the owner or the legal representative of the owner of the lost, stolen or destroyed certificates may be required to give the corporation a bond (or other adequate security) in such form and amount as the Board may deem sufficient to indemnify it against any claim that may be made against the corporation (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or issuance of such new certificate.

ARTICLE VIII.

INDEMNIFICATION

Section 8.1 Indemnification by Corporation.

Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("Proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, or was a director, officer, employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation, whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the California General Corporation Law, against all

expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; *provided*, *however*, that, except as provided in Section 8.2 of this Article VIII, the corporation shall indemnify any such person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the board of directors of the corporation. The right to indemnification conferred by this Section shall include the right to be paid by the corporation expenses incurred in defending any such Proceeding in advance of its final disposition to the fullest extent authorized by the California General Corporation Law; *provided*, *however*, that, if required by the California General Corporation Law, the payment of such expenses incurred by such person in advance of the final disposition of such Proceeding shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this Section or otherwise.

Section 8.2 Right of Claimant to Bring Suit.

If a claim under Section 8.1 of this Article VIII is not paid in full by the corporation within ninety (90) days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the California General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its board of directors, independent legal counsel, or it shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the California General Corporation Law, nor an actual determination by the corporation (including its board of directors, independent legal counsel, or its shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 8.3 Indemnification of Employees and Agents of the Corporation.

The corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Article with respect to the indemnification of and advancement of expenses to directors and officers of the corporation.

Section 8.4 Rights Not Exclusive.

The rights conferred on any person by this Article VIII above shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, By-Law, agreement, vote of shareholders or disinterested directors or otherwise.

Section 8.5 Indemnity Agreements.

The Board of Directors is authorized to enter into a contract with any Director, officer, employee or agent of the corporation, or any person who is or was serving at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other

enterprise, including employee benefit plans, or any person who was a director, officer, employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation, providing for indemnification rights equivalent to or, if the Board of Directors so determines, greater than, those provided for in this Article VIII.

Section 8.6 Insurance.

The corporation may purchase and maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the corporation or another corporation (including a predecessor corporation), partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the California Corporations Code.

Section 8.7 Amendment, Repeal or Modification.

Any amendment, repeal or modification of any provision of this Article VIII by the shareholders or the Directors of the corporation shall not adversely affect any right or protection of a Director or officer of the corporation existing at the time of such amendment, repeal or modification.

ARTICLE IX.

AMENDMENTS

Section 9.1 Power of Shareholders.

New By-Laws may be adopted or these By-Laws may be amended or repealed by the affirmative vote of a majority of the outstanding shares entitled to vote or by the written consent thereof, except as otherwise provided by law or by the Articles of Incorporation.

Section 9.2 Power of Directors.

Subject to the right of shareholders as provided in Section 9.1 of these By-Laws, By-Laws other than a By-Law or amendment thereof specifying or changing the authorized number of Directors, or the minimum or maximum number of a variable Board of Directors, or changing from a fixed to a variable Board of Directors or vice versa, may be adopted, amended or repealed by the approval of the Board of Directors.

Certificate of Secretary

I, John R. Adler, hereby certify:

That I am the duly elected and acting Secretary of Accuray Incorporated, a California corporation; and

That the foregoing By-Laws comprising twenty-four (24) pages, constitute the original By-Laws of said corporation as duly adopted the sole incorporator of the corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed the seal of said corporation this *10th* day of January, 1991.

/s/ JOHN R. ADLER

John R. Adler, Secretary

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Exhibit 4.1

Common Stock Warrant
Number C-14

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES, REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT.

Void after 8 August 2007

ACCURAY INCORPORATED
COMMON STOCK PURCHASE WARRANT

THIS CERTIFIES THAT, for value received, Hazem Chehabi, M.D. is entitled to purchase from ACCURAY INCORPORATED, a California corporation (the "Company"), for the period of five (5) years beginning on the Date of Grant set forth below, five hundred twenty-five thousand (525,000) shares of common stock of the Company. The per share price to be paid for the Common to be issued hereunder shall be the Warrant Price, initially one dollar ($1.00) per share, as adjusted pursuant to the terms hereof.

1. *Definitions.* As used herein, the following terms, unless the context otherwise requires, shall have the following meanings:

(a) *"Act"* shall mean the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

(b) *"Commission"* shall mean the Securities and Exchange Commission, or any other federal agency at the time administering the Act.

(c) *"Common Stock" or "Common"* shall mean shares of the Company's presently or subsequently authorized Common Stock, and any stock into which such Common Stock may hereafter be exchanged.

(d) *"Company"* shall mean ACCURAY INCORPORATED, a California corporation, and any corporation which shall succeed to or assume the obligations of ACCURAY INCORPORATED under this Warrant

(e) *"Date of Grant"* shall mean 9 August 2002.

(f) *"Exercise Date"* shall mean the effective date of the delivery of the Notice of Exercise pursuant to Sections 4 and 11 below.

(g) *"Holder"* shall mean any person who shall at the time be the registered holder of this Warrant.

(h) *"Shares"* shall mean shares of Common purchased or purchasable by the Holder under this Warrant.

2. *Issuance of Warrant and Consideration Therefor.* This Warrant is issued in consideration of the payment of ten thousand dollars ($10,000) and of the Holder's surrender concurrently with the issuance by the Company of this Warrant of warrant number C-4, expiring 1 November 2004, to purchase 225,000 shares of the common stock of the Company at $0.75 per share.

3. *Term.* The purchase right represented by this Warrant is exercisable only during the period commencing upon the Date of Grant and ending on the earliest of (a) fifth anniversary of the Date of Grant, (b) the closing of an underwritten public offering of the Company's Common Stock registered under the Act, or (c) upon the closing of a consolidation or merger of the Company (other than with its parent or wholly-owned subsidiary) with or into, or the transfer of all or substantially all of the Company's assets to, another corporation (unless the owners of the capital stock of the Company, prior to such transaction, continue to own a majority of the capital stock of the surviving corporation).

4. *Method of Exercise and Payment.*

(a) *Method of Exercise* Subject to Section 3 hereof and compliance with all applicable federal and state securities laws, the purchase right represented by this Warrant may be exercised, in whole or in part and from time to time, by the Holder by (i) surrender of this Warrant and delivery of the Notice of Exercise (the form of which is attached hereto as Exhibit A), duly executed, at the principal office of the Company and (ii) payment to the Company of an amount equal to the product of the then applicable Warrant Price multiplied by the number of Shares then being purchased pursuant to one of the payment methods permitted under Section 4(b) below.

(b) *Method of Payment.* Payment shall be made either (1) by check drawn on a United States bank and for United States funds made payable to the Company, or (2) by wire transfer of United States funds for the account of the Company.

(c) *Net Issue Exercise.* Notwithstanding any provisions herein to the contrary, in lieu of exercising this Warrant for cash, the Holder may elect to receive Shares equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with a properly endorsed notice of exercise and notice of such election, in which event the Company shall issue to the Holder a number of Shares of Common computed using the following formula:

$$X = Y(A–B)/A$$

Where X = the number of Shares of Common to be issued to the Holder.

Y = the number of Shares of Common purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being canceled (at the date of such calculation),

A = the fair market value of one share of the Common (at the date of such calculation), and

B = the Warrant Price (as adjusted to the date of such calculation).

For the purposes of the above calculation, fair market value of one share of Common shall be determined by agreement of the Company and the Holder or, failing such agreement, by a qualified business appraiser acceptable to the Company and the Holder; provided, however, that where there exists a public market for the Common at the time of such exercise, fair market value shall mean the average over the preceding twenty (20) trading days (or such fewer number of days as such public market has existed) of the mean of the high closing bid and asked prices on the over-the-counter market as reported by Nasdaq, or if then traded on a national securities exchange or the Nasdaq National Market, the average over the preceding twenty (20) trading days (or such fewer number of days as the Common has been so traded) of the mean of the high and low prices on the principal national securities exchange or the National Market on which it is so traded. Notwithstanding the foregoing, in the event the Warrant is exercised in connection with the Company's initial public offering of Common, the fair market value per share shall be the per share offering price to the public of the Company's initial public offering.

(d) *Delivery of Certificate.* In the event of any exercise of the purchase right represented by this Warrant, certificates for the Shares so purchased shall be delivered to the Holder within thirty

(30) days of delivery of the Notice of Exercise and, unless this Warrant has been fully exercised or has expired, a new warrant representing the portion of the Shares with respect to which this Warrant shall not then have been exercised shall also be issued to the Holder within such thirty (30) day period.

(e) *No Fractional Shares.* No fractional Shares shall be issued in connection with any exercise hereunder, but in lieu of such fractional Shares the Company shall make a cash payment therefor upon the basis of the fair market value per Share as of the date of exercise.

(f) *Company's Representations.*

(i) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. During the period within which the purchase right represented by this Warrant may be exercised, the Company shall at all times have authorized, and reserved for the purpose of issuance upon exercise of the purchase right represented by this Warrant, a sufficient number of Shares to provide for the exercise of the purchase right represented by this Warrant.

(ii) This Warrant has been duly authorized and executed by the Company and is a valid and binding obligation of the Company enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting the enforcement of creditors' rights.

(iii) The execution and delivery of this Warrant are not, and the issuance of the Shares upon exercise of this Warrant in accordance with the terms hereof will not be, inconsistent with the Company's Articles of Incorporation or Bylaws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Company, and do not and will not conflict with or contravene any provision of, or constitute a material default under, any material indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or, assuming the accuracy of the initial Holder's representations and warranties in the Subscription Agreement, require the consent or approval of, the giving of notice to, the registration or filing with, or the taking of any action in respect of or by any federal, state or local government authority or agency (other than such consents, approvals, notices, actions, filings, etc., as have already been obtained or made, as the case may be).

5. *Adjustment of Warrant Price and Number of Shares.* The number of securities issuable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) *Adjustment for Dividends in Stock.* In case at any time or from time to time on or after the date hereof the holders of the Common of the Company (or any shares of stock or other securities at the time receivable upon the exercise of this Warrant) shall have received or, on or after the record date fixed for the determination of eligible stockholders, shall have become entitled to receive, without payment therefor, other or additional stock of the Company by way of dividend, then, and in each case, the Holder of this Warrant shall, upon the exercise hereof, be entitled to receive, in addition to the number of Shares receivable thereupon, and without payment of any additional consideration therefor, the amount of such other or additional stock of the Company which such Holder would hold on the date of such exercise had it been the holder of record of such Common on the date hereof and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such Shares and/or all other additional

stock receivable by it as aforesaid during such period, giving effect to all adjustments called for during such period by subparagraphs (a), (b), (c), and (d) of this Paragraph 5.

(b) *Adjustment for Reclassification or Reorganization.* In case of any reclassification or change of the outstanding securities of the Company or of any reorganization of the Company on or after the date hereof, then, and in each such case, the Holder of this Warrant, upon the exercise hereof at any time after the consummation of such reclassification, change or reorganization, shall be entitled to receive, in lieu of or in addition to the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities to which such Holder would have been entitled upon such consummation if such Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment as provided in subparagraphs (a), (c) and (d) of this Paragraph 5.; in each such case, the terms of this Paragraph 5 shall be applicable to the shares of stock or other securities properly receivable upon the exercise of this Warrant after such consummation.

(c) *Stock Splits and Reverse Stock Splits.* If, at any time on or after the date hereof, the Company shall subdivide its outstanding Shares of Common into a greater number of Shares, the Warrant Price in effect immediately prior to such subdivision shall thereby be proportionately reduced and the number of Shares receivable upon exercise of this Warrant shall thereby be proportionately increased; and, conversely, if at any time on or after the date hereof the outstanding number of Shares of Common shall be combined into a smaller number of Shares, the Warrant Price in effect immediately prior to such combination shall thereby be proportionately increased and the number of Shares receivable upon exercise of the Warrant shall be proportionately decreased.

(d) *Merger, Sale of Assets, Etc.* If, at any time while this Warrant, or any portion thereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of Shares otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another corporation in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale or transfer of the Company's properties and assets as, or substantially as, an entirety to any other person, then, as a part of such reorganization, merger, consolidation, sale or transfer, lawful provision shall be made so that the Holder of this Warrant shall thereafter be entitled to receive upon exercise of this Warrant, during the period specified herein and upon payment of the Warrant Price then in effect, the number of shares of stock or other securities or property of the successor corporation resulting from such reorganization, merger, consolidation, sale or transfer that a holder of the Shares deliverable upon exercise of this Warrant would have been entitled to receive in such reorganization, consolidation, merger, sale or transfer if this Warrant had been exercised immediately before such reorganization, merger, consolidation, sale or transfer, all subject to further adjustment as provided in this Paragraph 5. If the per-share consideration payable to the Holder hereof for Shares in connection with any such transaction is in the form other than cash or marketable securities, then the value of such consideration shall be determined by agreement of the Company and the Holders of Warrants representing two-thirds of all Common Shares purchasable under this and all similar Warrants or, failing such agreement, by a qualified business appraiser acceptable to the Company and the said Holders. In all events, appropriate adjustment (determined as aforesaid) shall be made in the application of the provisions of this Warrant with respect to the rights and interests of the Holder after the transaction, to the end that the provisions of this Warrant shall be applicable after that event, as near as reasonably may be, in relation to any Shares or other property deliverable after that event upon exercise of this Warrant.

6. *Notices of Record Date, Etc.* In the event of (a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution (the "Distribution"), (b) any capital reorganization or reclassification of the stated capital of the Company or any consolidation or merger of the Company with any other corporation or corporations (other than a wholly-owned subsidiary), or the sale or distribution of all or substantially all of the Company's property and assets (the "Reorganization Event"), or (c) any proposed filing of a registration statement under the Act in connection with a primary public offering of the Company's Common Stock (the "Registration Event"), the Company will mail or cause to be mailed to the Holder a notice specifying (i) the date of any such Distribution stating the amount and character of such Distribution, (ii) the date on which any such Reorganization Event or Registration Event is expected to become effective, and (iii) the time, if any, that is to be fixed as to when the holders of record of the Company's securities shall be entitled to exchange their shares of the Company's securities for securities or other property deliverable upon such Reorganization Event. Such notice shall be mailed at least thirty (30) days prior to the date therein specified

7. *Compliance with Act; Transferability and Negotiability of Warrant; Disposition of Shares.*

(a) *Compliance with Act.* The Holder, by acceptance hereof, agrees that this Warrant and the Shares to be issued upon the exercise hereof are being acquired solely for its own account (or a trust account if the Holder is a trust) and not as a nominee for any other party and not with a view toward the resale or distribution thereof, and that it will not offer, sell or otherwise dispose of this Warrant or any Shares to be issued upon the exercise hereof except under circumstances which will not result in a violation of the Act. Upon the exercise of this Warrant, the Holder shall confirm in writing, in a form satisfactory to the Company, that the Shares so issued are being acquired solely for its own account (or a trust account if the Holder is a trust) and not as a nominee for any other party and not with a view toward resale or distribution thereof. This Warrant and the Shares to be issued upon the exercise hereof (unless registered under the Act) shall be imprinted with a legend in substantially the following form.

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN ELECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT.

In addition, this Warrant and the Shares to be issued upon the exercise hereof shall bear any legends required by the securities laws of any applicable states.

(b) *Transferability and Negotiability of Warrant.* This Warrant may not be transferred or assigned in whole or in part without compliance with all applicable federal and state securities laws by the transferor and the transferee (including the delivery of investment representation letters and legal opinions satisfactory to the Company, if requested by the Company, and the transfer is to a person other than a general partner of the initial Holder). Subject to the provisions of this Warrant with respect to compliance with the Act, title to this Warrant may be transferred by endorsement and delivery in the same manner as a negotiable instrument transferable by endorsement and delivery; provided, however, that neither this Warrant nor the Shares purchasable with this Warrant may be transferred to any entity or person which the Company reasonably determines to be an actual or potential competitor of the Company. The Company shall act promptly to record

transfers of this Warrant on its books, but the Company may treat the registered Holder of this Warrant as the absolute owner of this Warrant for all purposes, notwithstanding any notice to the contrary.

(c) *Disposition of Shares.* With respect to any offer, sale, transfer or other disposition of any Shares (or securities issued upon conversion of the Shares) acquired pursuant to the exercise of this Warrant prior to registration of such Shares, except for any such offer, sale, transfer or other disposition of Shares to a general partner of the initial Holder, the Holder and each subsequent holder of this Warrant agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of legal counsel for such holder, reasonably satisfactory to the Company and its legal counsel, if requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act or any other federal or state securities laws) of such Shares and indicating whether or not under the Act certificates for such Shares to be sold or otherwise disposed of require any restrictive legend as to the applicable restrictions on transferability in order to insure compliance with the Act. Promptly upon receiving such written notice and reasonably satisfactory opinion, if so requested, the Company, as promptly as practicable, shall notify such holder that such holder may sell or otherwise dispose of such Shares, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this subsection (c) that the opinion of legal counsel for the holder is not reasonably satisfactory to the Company and its legal counsel, the Company shall so notify the holder promptly after such determination has been made. Notwithstanding the foregoing, such Shares may be offered, sold or otherwise disposed of in accordance with Rule 144, provided that the Company shall have been furnished with such information as the Company may reasonably request to provide a reasonable assurance that the provisions of Rule 144 have been satisfied. Each certificate representing the Shares thus transferred (except a transfer pursuant to Rule 144(k)) shall bear a restrictive legend as to the applicable restrictions on transferability in order to insure compliance with the Act, unless, in the aforesaid opinion of legal counsel for the holder, such legend is not required in order to insure compliance with the Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

8. *Rights of Shareholders.* No Holder shall be entitled to vote or receive dividends or be deemed the holder of Shares or any other securities of the Company which may at any time be issuable on the exercise of this Warrant for any purpose, nor shall anything contained herein be construed to confer upon the Holder, as such, any of the rights of a shareholder of the Company or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, consolidation, merger, transfer of assets or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until this Warrant shall have been exercised and the Shares issuable upon exercise hereof shall have become deliverable, as provided herein.

9. *Replacement of Warrants.* On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

10. *Exchange of Warrant.* Subject to the other provisions of this Warrant, on surrender of this Warrant for exchange, properly endorsed and subject to the provisions of this Warrant with respect to compliance with the Act, the Company at its expense shall issue to or on the order of the Holder a new warrant or warrants of like tenor, in the name of the Holder or as the Holder (on payment by the

Holder of any applicable transfer taxes) may direct, for the number of Shares issuable upon exercise thereof.

11. *Notices* All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, to such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time.

12. *Waiver.* This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

13. *Governing Law.* This Warrant shall be governed by and construed in accordance with the laws of the State of California, as such laws are applied to agreements entered into in California and to be performed solely by California residents. The Company represents to the Holder that this Warrant constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief and other equitable remedies.

14. *Titles and Subtitles; Forms of Pronouns.* The titles of the Sections and Subsections of this Warrant are for convenience only and are not to be considered in construing this Warrant. All pronouns used in this Warrant shall be deemed to include masculine, feminine and neuter forms.

15. *Expiration.* Subject to earlier termination pursuant to Section 3 above, the right to exercise this Warrant shall expire at 5:00 P.M. California time on the ending date determined in accordance with Paragraph 3.

Dated: 9 Aug, 2002

ACCURAY INCORPORATED

By: /s/ DONALD CADDES

Title: President & COO

EXHIBIT A

NOTICE OF EXERCISE

TO: ACCURAY INCORPORATED

1. The undersigned Holder of the attached original, executed Common Stock Purchase Warrant hereby elects to exercise its purchase right under such Warrant with respect to Shares, as defined in the Warrant, of Accuray Incorporated Common.

2. The undersigned Holder elects to pay the aggregate Warrant Price for such Shares (the "Exercise Shares") in the following manner:

- o by the enclosed check drawn on a United States bank and for United States funds made payable to the Company in the amount of $;
- o by wire transfer of United States funds to the account of the Company in the amount of $, which transfer has been made before or simultaneously with the delivery of this Notice pursuant to the instructions of the Company; or
- o pursuant to the forgiveness provisions set forth in Section 4(b)(3) of the Warrant, the Company to apply the amount of the aggregate Warrant Price first to interest owed and then to principal owed.
- o pursuant to the net exercise provisions set forth in Section 4(c) of the Warrant

3. Please issue a stock certificate or certificates representing the appropriate number of Shares in the name of the undersigned or in such other names as is specified below;

Name: _____

Address: _____

_____

Tax Ident. No.: _____

Date. _____ HOLDER: _____

QuickLinks

Exhibit 4.2

ACCURAY INCORPORATED
INVESTORS' RIGHTS AGREEMENT
OCTOBER 30, 2006

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ACCURAY INCORPORATED
INVESTORS' RIGHTS AGREEMENT

This Investors' Rights Agreement (this "**Agreement**") is made as of October 30, 2006, by and among Accuray Incorporated, a California corporation (the "**Company**"), and the holders of the Company's Series C Preferred Stock as converted ("**Prior C Holders**"), the holders of the Company's Series A Preferred Stock ("**Series A Holders**"), the holders of the Company's Series A-1 Preferred Stock ("**Series A-1 Holders**"), the holders of the Company's Series B Preferred Stock ("**Series B Holders**") and the holders of the Company's Series C Preferred Stock ("**Series C Holders**"). The Prior C Holders, the Series A Holders, the Series B Holders and the Series C Holders are listed on Exhibit A and are referred to herein either collectively as the "**Investors**" or individually as an "**Investor**". Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in **Section 1**.

RECITALS

WHEREAS: The Company and each of the Investors has previously entered into agreements granting certain registration rights to each of the Investors;

WHEREAS: The Company and the Prior C Holders entered into an Prior C Rights Agreement, pursuant to which the Company granted certain registration rights to the Prior C Holders;

WHEREAS: The Company and the Series A Holders entered into a Series A Rights Agreement, pursuant to which the Company granted certain registration rights to the Series A Holders;

WHEREAS: The Company and the Series A-1 Holders entered into a Series A-1 Rights Agreement, pursuant to which the Company granted certain registration rights to the Series A-1 Holders;

WHEREAS: The Company and the Series B Holders entered into a Series B Rights Agreement, pursuant to which the Company granted certain registration rights to the Series B Holders;

WHEREAS: The Company and the Series C Holders each entered into a Series C Rights Agreement, pursuant to which the Company granted certain registration rights to the Series C Holders;

WHEREAS: The Company and the Investors each desire to adopt this Agreement in order to clarify the rights of the Investors under the Prior Rights Agreements, and each desire to waive any rights they may have under the Prior Agreements, and to terminate the Prior Agreements upon adoption of this Agreement;

NOW, THEREFORE: In consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which is hereby acknowledged, the Company and the Investors hereto agree as follows:

Section 1
Definitions

1.1 *Certain Definitions.* As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "**Board**" shall mean the Company's Board of Directors.

(b) "**Commission**" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(c) "**Common Stock**" means the Common Stock of the Company.

(d) "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(e) "**Holder**" shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been duly and validly transferred in accordance with **Section 2.12** of this Agreement.

(f) "**Indemnified Party**" shall have the meaning set forth in **Section 2.6(c)** hereto.

(g) "**Indemnifying Party**" shall have the meaning set forth in **Section 2.6(c)** hereto.

(h) "**Initial Public Offering**" shall mean the closing of the Company's first firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act.

(i) "**Initiating Holders**" shall mean any Holder or Holders who in the aggregate hold not less than thirty percent (30%) of the outstanding Registrable Securities.

(j) "**Inspection Rights**" shall have the meaning set forth in **Section 3.2** hereto.

(k) "**Prior C Rights Agreement**" shall mean Section 7 of the Series C Preferred Stock Purchase Agreement between the Company and the Prior C Holders, dated August, 1994, pursuant to which the Company granted certain registration rights to the Prior C Holders.

(l) "**New Securities**" shall mean any shares of capital stock of the Company, including Common Stock and Preferred Stock, whether authorized or not, and rights, options, or warrants to purchase said shares of capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; *provided*, *however*, that the term "New Securities" does not include (i) securities issued upon conversion of the Shares; (ii) securities issued to employees, consultants, officers, and directors of the Company, pursuant to any arrangement or Company employee benefit plan, in each case approved by the Board; (iii) securities issued pursuant to any rights or agreements, including, without limitation, convertible securities, options, bonds, debentures, notes or other evidences of indebtedness and warrants, provided that the Company shall have complied with the right of first offer established by Section 5 below with respect to the initial sale or grant by the Company of such rights or agreements; (iv) securities issued in connection with any stock split, stock dividend or recapitalization by the Company; (v) securities issued pursuant to the acquisition of another entity by the Company by merger, purchase of substantially all of the assets or shares or other reorganization whereby the Company will own not less than a majority of the voting power of the surviving or successor business, provided that such transaction was approved by the Board; (vi) securities issued pursuant to the acquisition of technology or other intellectual property by outright purchase or exclusive license, provided that such transaction was approved by the Board; (vii) securities issued to lenders, financial institutions, equipment lessors or real estate lessors of the Company in connection with a bona fide borrowing or leasing transaction, in each case approved by the Board; (viii) securities issued to vendors or customers of the Company, or to other persons in similar commercial arrangements with the Company other than for primarily equity financing purposes, if such issuance is in each case approved by the Board; (ix) securities issued in connection with corporate partnering transactions other than for primarily equity financing purposes, if such issuance is in each case approved by the Board; and (x) any right, option, or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to clauses (i) through (ix) above.

(m) "**Other Selling Stockholders**" shall mean persons other than Holders who, by virtue of agreements with the Company, are entitled to include their securities in certain registrations hereunder.

(n) "**Other Registrable Securities**" shall mean securities of the Company, with respect to which registration rights have been granted.

(o) "**Pro Rata Portion**" means the ratio that (x) the sum of the number of shares of the Company's Common Stock held by an Series C Holder immediately prior to the issuance of New Securities, assuming full exercise and/or conversion of the Shares and all Company securities exercisable and/or convertible into the Company's Common Stock then held by such Series C Holder, bears to (y) the sum of the total number of shares of the Company's Common Stock then outstanding, assuming full exercise and/or conversion of all Company securities exercisable and/or convertible into the Company's Common Stock then outstanding.

(p) "**Prior Rights Agreements**" shall mean, collectively, the Prior C Rights Agreement, the Series A Rights Agreement, the Series A-1 Rights Agreement, the Series B Rights Agreement and the Series C Rights Agreement, as such terms are defined herein.

(q) "**Qualifying IPO**" shall mean an Initial Public Offering where the aggregate net proceeds to the Company (before deductions of underwriters' commissions and expenses) equals or exceeds $25,000,000 at a price per share to the public equal to at least $3.00 (as adjusted for stock dividends, combinations, subdivisions or stock splits with respect to such shares).

(r) "**Registrable Securities**" shall mean (i) shares of Common Stock issued or issuable pursuant to the conversion of the Shares and (ii) any Common Stock issued as a dividend or other distribution with respect to or in exchange for or in replacement of the shares referenced in (i) above; *provided, however*, that Registrable Securities shall not include any shares of Common Stock described in clause (i) or (ii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor's rights under this Agreement are not validly assigned in accordance with this Agreement.

(s) The terms "**register**," "**registered**" and "**registration**" shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(t) "**Registration Expenses**" shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(u) "**Restricted Securities**" shall mean any Registrable Securities required to bear the first legend set forth in **Section 2.8(c)** hereof.

(v) "**Rule 144**" shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(w) "**Rule 145**" shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission

(x) "**Rule 415**" shall mean Rule 415 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(y) "**Securities Act**" shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(z) "**Selling Expenses**" shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder.

(aa) "**Series A Rights Agreement"** shall mean the Amended and Restated Registration Rights Agreement, dated March, 2001, pursuant to which the Company granted certain registration rights to the Series A Holders;

(bb) "**Series A-1 Rights Agreement**" shall mean the Amended and Restated Registration Rights Agreement, dated June 6, 2001, pursuant to which the Company granted certain registration rights to the Series A-1 Holders;

(cc) "**Series B Rights Agreement**" shall mean Amended and Restated Registration Rights Agreement, dated June 6, 2001, pursuant to which the Company granted certain registration rights to the Series B Holders.

(dd) "**Series C Rights Agreement**" shall mean Series C Registration Rights Agreements, dated variously from February 7, 2002 through June 30, 2002, pursuant to which the Company granted certain registration rights to the Series C Holders.

(ee) "**Series C Registrable Securities**" shall mean the shares of Series C Preferred Stock held by the Series C Holders.

(ff) "**Shares**" shall mean the shares of the Company's Series C Preferred Stock, as converted, held by the Prior C Holders, the shares of Series A Preferred Stock held by the Series A Holders, the shares of Series A-1 Preferred Stock held by the Series A-1 Holders, the shares of Series B Preferred Stock held by the Series B Holders, the shares of Series C Preferred Stock held by the Series C Holders, and the shares of Common Stock issuable or issued upon conversion of any of the "Shares".

(gg) "**Withdrawn Registration**" shall mean a forfeited demand registration under **Section 2.1** in accordance with the terms and conditions of **Section 2.4**.

Section 2
Registration Rights

2.1 *Requested Registration.*

(a) *Request for Registration.* Subject to the conditions set forth in this **Section 2.1**, if the Company shall receive from Initiating Holders a written request signed by such Initiating Holders that the Company effect any registration with respect to all or a part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of by such Initiating Holders), the Company will:

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, file and use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within thirty (30) days after such written notice from the Company is mailed or delivered.

(b) *Limitations on Requested Registration.* The Company shall not be obligated to effect, or to take any action to effect, any such registration pursuant to this **Section 2.1**:

(i) Prior to the earlier of (A) the One (1) year anniversary of the date of this Agreement or (B) one hundred eighty (180) days following the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public;

(ii) If the Initiating Holders propose to sell Registrable Securities equal to less than 30% of the total outstanding Registrable Securities, unless the anticipated aggregate proceeds of such sale (after deduction for underwriter's discounts and expenses related to the issuance) would exceed $5,000,000;

(iii) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(iv) After the Company has initiated two such registrations pursuant to this **Section 2.1** (counting for these purposes only (x) registrations which have been declared or ordered effective and pursuant to which securities have been sold, and (y) Withdrawn Registrations);

(v) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a Company-initiated registration; *provided* that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or

(vi) If the Initiating Holders propose to dispose of shares of Registrable Securities which may be immediately registered on Form S-3 pursuant to a request made under **Section 2.3** hereof.

(c) *Deferral.* If (i) in the good faith judgment of the Board of Directors of the Company, the filing of a registration statement covering the Registrable Securities would be detrimental to the Company and the Board of Directors of the Company concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then (in addition to the limitations set forth in **Section 2.1(b)(v)** above) the Company shall have the right to defer such filing for a period of not more than one hundred eighty (180) days after receipt of the request of the Initiating Holders, and, provided further, that the Company shall not defer its obligation in this manner more than twice in any twelve-month period.

(d) *Other Securities.* The registration statement filed pursuant to the request of the Initiating Holders may, subject to the provisions of **Section 2.1(e)**, include Other Registrable Securities, and may include securities of the Company being sold for the account of the Company.

(e) *Underwriting.* If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this **Section 2.1** and the Company shall include such information in the written notice given pursuant to **Section 2.1(a)(i)**. In such event, the right of any Holder to include all or any portion of its Registrable Securities in a registration pursuant to this **Section 2.1**

shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities to the extent provided herein. If the Company shall request inclusion in any registration pursuant to **Section 2.1** of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to **Section 2.1**, the Initiating Holders shall, on behalf of all Holders, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of the Company or such other persons in such underwriting and the inclusion of the Company's and such person's other securities of the Company and their acceptance of the further applicable provisions of this **Section 2** (including **Section 2.10)**. The Company shall (together with all Holders and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders, which underwriters are reasonably acceptable to the Company.

Notwithstanding any other provision of this **Section 2.1**, if the underwriters advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of shares to be included in the registration statement or underwriting shall be allocated as follows: (i) first, among all Series C Holders requesting to include Series C Registrable Securities in such registration statement or underwriting, on a pro rata basis according to the number of Series C Registrable Securities then outstanding and held by each Series C Holder requesting registration; (ii) second, after the inclusion of all the Series C Registrable Securities held by the Series C Holders requesting registration, then among all Holders requesting to include Registrable Securities in such registration statement on a on a pro rata basis according to the number of outstanding Registrable Securities held by each Holder requesting registration, assuming such Registrable Securities were converted into Common Stock; (iii) third, after the inclusion of the Registrable Securities held by the Holders requesting registration, then among any Other Selling Stockholders requesting to include Other Registrable Securities in such registration statement on a on a pro rata basis according to the number of outstanding Other Registrable Securities held by each Other Selling Stockholder requesting registration, assuming such Other Registrable Securities were converted into Common Stock; and (iv) fourth, after the inclusion of the Other Registrable Securities held by the Other Selling Stockholders requesting registration, to the Company which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Initiating Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or Other Registrable Securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this **Section 2.1(e)**, then the Company shall then offer to all Holders and Other Selling Stockholders who have retained rights to include securities in the registration the right to include additional Registrable Securities or Other Registrable Securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders and Other Selling Stockholders requesting additional inclusion, as set forth above.

2.2 *Company Registration.*

(a) *Company Registration.* If the Company shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to **Section 2.1** or **2.3**, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate

reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, the Company will:

(i) promptly give written notice of the proposed registration to all Holders; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under blue sky laws or other compliance), except as set forth in **Section 2.2(b)** below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by any Holder or Holders received by the Company within ten (10) days after such written notice from the Company is mailed or delivered. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) *Underwriting.* If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to **Section 2.2(a)(i)**. In such event, the right of any Holder to registration pursuant to this **Section 2.2** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this **Section 2.2**, if the underwriters advise the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may (subject to the limitations set forth below) exclude all Registrable Securities from, or limit the number of Registrable Securities to be included in, the registration and underwriting. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated, as follows: (i) first, to the Company for securities being sold for its own account, (ii) second, after the inclusion of all the securities being offered by the Company, to any Series C Holders requesting to include Series C Registrable Securities in such registration statement based on the pro rata percentage of Series C Registrable Securities held by such Series C Holders, (iii) third, after the inclusion of all the securities of the Company and the Series C Registrable Securities of the Series C Holders, then to the Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, on an as converted to Common Stock basis, and (iv) fourth, after the inclusion of all the securities of the Company and the Registrable Securities of the Holders, then to the Other Selling Stockholders requesting to include Other Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Other Selling Stockholders, on an as converted to Common Stock basis; provided however

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall also be excluded therefrom by written notice from the Company or the underwriter. The Registrable Securities or other securities so excluded shall also be withdrawn from such registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(c) *Right to Terminate Registration.* The Company shall have the right to terminate or withdraw any registration initiated by it under this **Section 2.2** prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

2.3 *Registration on Form S-3.*

(a) *Request for Form S-3 Registration.* After its Initial Public Offering, the Company shall use commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this **Section 2** and subject to the conditions set forth in this **Section 2.3**, if the Company shall receive from a Holder or Holders of Registrable Securities a written request that the Company effect any registration on Form S-3 or any similar short form registration statement with respect to all or part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), the Company will take all such action with respect to such Registrable Securities as required by **Section 2.1(a)(i)** and **(ii)**.

(b) *Limitations on Form S-3 Registration.* The Company shall not be obligated to effect, or take any action to effect, any such registration pursuant to this **Section 2.3**:

(i) In the circumstances described in either **Sections 2.1(b)(i)**, **2.1(b)(iii)** or **2.1(b)(v)**;

(ii) If the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) on Form S-3 at an aggregate price to the public of less than 2,000,000; or

(iii) If, in a given twelve-month period, the Company has effected two (2) such registrations in such period.

(c) *Deferral.* The provisions of **Section 2.1(c)** shall apply to any registration pursuant to this **Section 2.3**.

(d) *Underwriting.* If the Holders of Registrable Securities requesting registration under this **Section 2.3** intend to distribute the Registrable Securities covered by their request by means of an underwriting, the provisions of **Sections 2.1(e)** shall apply to such registration. Notwithstanding anything contained herein to the contrary, registrations effected pursuant to this **Section 2.3** shall not be counted as requests for registration or registrations effected pursuant to **Section 2.1**.

2.4 *Expenses of Registration.* All Registration Expenses incurred in connection with registrations pursuant to **Sections 2.1**, **2.2** and **2.3** hereof shall be borne by the Company; *provided*, *however*, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to **Sections 2.1** and **2.3** if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered or because a sufficient number of Holders shall have withdrawn so that the minimum offering conditions set forth in **Sections 2.1** and **2.3** are no longer satisfied (in which case all participating Holders shall bear such expenses pro rata among each other based on the number of Registrable Securities requested to be so registered), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to a demand registration pursuant to **Section 2.1**. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration pro rata among each other on the basis of the number of Registrable Securities so registered.

2.5 *Registration Procedures.* In the case of each registration effected by the Company pursuant to **Section 2**, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its commercially reasonable efforts to:

(a) Keep such registration effective for a period ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as the Holder or Holders have completed the distribution described in the registration statement relating thereto.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as a Holder from time to time may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; *provided*, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed; and

(h) In connection with any underwritten offering pursuant to a registration statement filed pursuant to **Section 2.1** hereof, enter into an underwriting agreement in form reasonably necessary to effect the offer and sale of Common Stock, provided such underwriting agreement contains reasonable and customary provisions, and provided further, that each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

2.6 *Indemnification.*

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors and partners, legal counsel, and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this **Section 2**, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged

violation) by the Company of the Securities Act, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification, or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, legal counsel, and accountants and each person controlling such Holder, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action; *provided* that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder, any of such Holder's officers, directors, partners, legal counsel or accountants, any person controlling such Holder, such underwriter or any person who controls any such underwriter and stated to be specifically for use therein; and *provided, further* that, the indemnity contained in this **Section 2.6(a)** shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder, and each of their officers, directors, and partners, and each person controlling such Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any such registration statement, prospectus, offering circular, or other document, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company and such Holders, directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; *provided, however*, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and *provided* that in no event shall any indemnity under this **Section 2.6** exceed the gross proceeds from the offering received by such Holder.

(c) Each party entitled to indemnification under this **Section 2.6** (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; *provided* that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and *provided further* that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this **Section 2.6**, to the extent such failure is not prejudicial. No Indemnifying

Party, in the defense of any such claim or litigation, shall, without the written consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this **Section 2.6** is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

2.7 *Information by Holder.* Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this **Section 2**.

2.8 *Restrictions on Transfer.*

(a) The holder of each certificate representing Registrable Securities by acceptance thereof agrees to comply in all respects with the provisions of this **Section 2.8**. Each Holder agrees not to make any sale, assignment, transfer, pledge or other disposition of all or any portion of the Restricted Securities, or any beneficial interest therein, unless and until (x) the transferee thereof has agreed in writing for the benefit of the Company to take and hold such Restricted Securities subject to, and to be bound by, the terms and conditions set forth in this Agreement, including, without limitation, this **Section 2.8** and **Section 2.10**, except for transfers permitted under **Section 2.8(b)**:

(i) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) Such Holder shall have given prior written notice to the Company of such Holder's intention to make such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition, and, if requested by the Company, such Holder shall have furnished the Company, at the Holder's expense, with (i) an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of such Restricted Securities under the Securities Act or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a

recommendation by the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the Holder to the Company.

(b) Permitted transfers include (i) a transfer not involving a change in beneficial ownership, or (ii) a transactions involving the distribution without consideration of Restricted Securities by any Holder to (x) the Holder's family member or trust for the benefit of an individual Holder (y) a parent, subsidiary or other affiliate of Holder that is a Corporation, or (z) any of its partners, members or other equity owners, or retired partners, retired members or other equity owners, or to the estate of any of its partners, members or other equity owners or retired partners, retired members or other equity owners, or (iii) transfers in compliance with Rule 144(k), as long as the Company is furnished with satisfactory evidence of compliance with such Rule; *provided*, in each case, that the Holder thereof shall give written notice to the Company of such Holder's intention to effect such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition.

(c) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS IN THE EVENT OF A PUBLIC OFFERING, AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AMONG THE COMPANY AND THE ORIGINAL HOLDERS OF THESE SHARES, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this **Section 2.8**.

(d) The first legend referring to federal and state securities laws identified in **Section 2.8(c)** hereof stamped on a certificate evidencing the Restricted Securities and the stock transfer instructions and record notations with respect to such Restricted Securities shall be removed and the Company shall issue a certificate without such legend to the holder of such Restricted Securities if (i) such securities are registered under the Securities Act, or (ii) such holder provides the Company with an opinion of counsel reasonably acceptable to the Company to the effect that a public sale or transfer of such securities may be made without registration under the Securities Act, or (iii) such holder provides the Company with reasonable assurances, which may, at the

option of the Company, include an opinion of counsel satisfactory to the Company, that such securities can be sold pursuant to Section (k) of Rule 144 under the Securities Act.

2.9 *Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) Make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

2.10 *Market Stand-Off Agreement.* Each Holder hereby agrees that such Holder shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of a registration statement of the Company filed under the Securities Act; *provided* that all officers, directors and holders of not less than one percent (1%) of the Company's securities are similarly obligated; and *provided further* that should the Company release any amount of securities, then this release shall be effected on a pro rata basis with respect to all Holders so obligated under this **Section 2.10**. The obligations described in this **Section 2.10** shall not apply to a registration relating solely to the Company's employee benefit plans, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in **Section 2.8(c)** hereof with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred eighty (180) day period. Each Holder agrees to execute a market standoff agreement with said underwriters in customary form consistent with the provisions of this **Section 2.10**.

2.11 *Delay of Registration.* No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this **Section 2**.

2.12 *Transfer or Assignment of Registration Rights.* The rights to cause the Company to register securities granted to a Holder by the Company under this **Section 2** may be transferred or assigned by a Holder only to (i) a transferee or assignee of not less than 100,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like) or (ii) a transferee or assignee of all of the transferring Holder's Registrable Securities); *provided* that (i) such transfer or assignment of Registrable Securities is effected in accordance with the terms of **Section 2.8** hereof and applicable securities laws, (ii) the Company is

given written notice prior to said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are intended to be transferred or assigned and (iii) the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement, including without limitation the obligations set forth in **Section 2.10**.

2.13 *Limitations on Subsequent Registration Rights.* From and after the date of this Agreement, the Company shall not, without the prior written consent of a majority in interest of the Holders, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are *pari passu* with or senior to the registration rights granted to the Holders hereunder.

2.14 *Termination of Registration Rights.* The right of any Holder to request registration or inclusion in any registration pursuant to **Section 2.1**, **2.2** or **2.3** shall terminate on the earlier of (i) such date, on or after the closing of the Company's first registered public offering of Common Stock, on which all shares of Registrable Securities held or entitled to be held upon conversion by such Holder may immediately be sold under Rule 144 during any ninety (90)-day period, and (ii) three (3) years after the closing of a Qualifying IPO.

Section 3
Covenants of the Company

The Company hereby covenants and agrees, as follows:

3.1 *Basic Financial Information and Inspection Rights.* So long as an Investor is a Holder of not less than 100,000 shares of Registrable Securities (as adjusted for any stock splits, consolidations and the like) (each a "**Major Investor**"), the Company will furnish to such Major Investor the following reports:

(a) as soon as practicable after the end of each fiscal year, and in any event within ninety (90) days thereafter, consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such year, prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and audited and certified by independent public accountants of national standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each fiscal quarter, consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of such quarterly period, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such quarterly period, prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the corresponding quarterly periods of the previous fiscal year, subject to changes resulting from normal year-end audit adjustments, all in reasonable detail and certified by the principal financial or accounting officer of the Company, except such financial statements need not contain the notes required by generally accepted accounting principles;

(c) as soon as practicable, but in any event within thirty (30) days prior to the start of each fiscal year, the Company will furnish each Major Investor with the Company's annual and quarterly budgets (including projected balance sheets and profit and loss and cash flow statements) on a month to month basis for such fiscal year.

3.2 *Inspection.* The Company shall permit each Major Investor, at such Major Investor's expense, to visit and inspect the Company's properties, to examine its books of account and other

records, and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Major Investor (the "**Inspection Rights**").

3.3 *Aggregation of Stock.* All Shares held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under **Sections 3.1 and 3.2**.

3.4 *Confidentiality.* Anything in this Agreement to the contrary notwithstanding, the Holders shall not have access to or the right to receive any confidential, trade secrets or classified information of the Company as reasonably determined in good faith by the Company's Board of Directors. The Company shall not be required to comply with any information rights of **Section 3.1** with respect to any Holder if the Company's Board of Directors reasonably determines in good faith that such Holder is a competitor or an officer, employee, director or holder of more than ten percent (10%) of a competitor. Each Holder acknowledges that the information received by it pursuant to this Agreement is confidential and for its use only in connection with its relationship to the Company, and it will not misuse such confidential information or use such confidential information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than its employees or agents having a need to know the contents of such information, and its attorneys or other legal or financial advisors, who in each case shall be subject to confidentiality requirements at least as restrictive as those set forth herein), unless the Company has made such information available to the public generally or such Holder is required to disclose such information by a governmental authority.

3.5 *Termination of Covenants.* The covenants set forth in this **Section 3** shall terminate and be of no further force and effect after the closing of a Qualifying IPO.

Section 4
Waiver of Prior Rights Agreements

4.1 *Amendment, Waiver and Termination of Prior Rights Agreements.* Effective and contingent upon execution of this Agreement by the Company and the Investors, the Prior Rights Agreements, or such portions of those agreements as either explicitly or implicitly might be construed to grant any registration rights contrary to those rights set forth herein, are amended and restated in their entirety and shall be of no further force and effect, and the Prior Rights Agreements shall be terminated.

Section 5
Right of First Refusal

5.1 *Right of First Refusal.*

(a) *Right of First Refusal.* Subject to the terms and conditions contained in this Section 5.1, the Company hereby grants to each Series C Holder the right of first refusal to purchase such Series C Holder's Pro Rata Portion of any New Securities which the Company may, from time to time, propose to issue and sell. A Series C Holder shall be entitled to apportion the right of first refusal hereby granted it among itself and its partners, members and affiliates in such proportions as it deems appropriate.

(b) *Notice of Right.* In the event the Company proposes to undertake an issuance of New Securities, it shall give each Series C Holder written notice of its intention, describing the type of New Securities and the price and terms upon which the Company proposes to issue the same. Each Series C Holder shall have twenty (20) days from the date of delivery of any such notice to agree to purchase up to such Series C Holder's Pro Rata Portion of such New Securities, for the price and upon the terms specified in the notice, by delivering written notice to the Company and stating therein the quantity of New Securities to be purchased.

(c) *Right of Over-Allotment.* In the event that the Investors fail to fully exercise the right of first refusal within such twenty (20) day period, each Investor fully exercising its right of first refusal may purchase, on a pro rata basis (calculated with respect to other fully exercising Investors only), the non-purchasing Series C Holder's or Series C Holders' Pro Rata Portion(s). The Company will promptly notify those Series C Holders fully exercising their rights of first refusal, in writing, of the availability of additional New Securities, and each of the fully-exercising Series C Holders shall have ten (10) days from the date of receipt of any such notice to agree to purchase up to such Investor's pro rata portion of such additional New Securities.

(d) *Lapse and Reinstatement of Right.* The Company shall have sixty (60) days following the twenty (20) day period described in Section 2.1(b) and the additional ten (10) day period described in Section 2.1(c) to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within thirty (30) days from the date of said agreement) to sell the New Securities with respect to which the Series C Holders' right of first refusal was not exercised, at a price and upon terms no more favorable to the purchasers of such securities than specified in the Company's notice. In the event the Company has not sold the New Securities or entered into an agreement to sell the New Securities within said sixty (60) day period (or sold and issued New Securities in accordance with the foregoing within thirty (30) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities without first offering such securities to the Series C Holders in the manner provided above.

5.2 *Assignment of Right of First Refusal.* The right of first refusal granted hereunder may be assigned by a Series C Holder only to a transferee or assignee of not less than 100,000 shares of Series C Registrable Securities (as appropriately adjusted for stock splits and the like) then outstanding, provided that the Company is given written notice at the time of or within a reasonable time after said assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such rights are being assigned. Notwithstanding the foregoing, the right of first refusal granted hereunder is assignable (i) between and among any Series C Holders; (ii) to an Affiliate of a Series C Holder or (iii) to a Series C Holder which is (A) a partnership to its partners or retired partners in accordance with partnership interests, (B) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (C) a corporation to its stockholders in accordance with their interests in the corporation or (D) to the Series C Holder's family member or trust for the benefit of an individual Series C Holder.

5.3 *Termination of Right of First Refusal.* The right of first refusal granted under Section 5.1 of this Agreement shall expire immediately prior to the earlier of: (i) any reorganization, merger, consolidation or similar transaction (or series of related transactions) in which the outstanding capital stock of the Company immediately prior to such transaction or series of related transactions represents less than a majority of the voting power of (1) the surviving entity or, (2) the parent of such surviving entity if the surviving entity is owned by such parent, immediately following such transaction or series of related transactions; (ii) the consummation of an Qualifying IPO.

Section 6
Miscellaneous

6.1 *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders of two-thirds in interest of the Registrable Securities; *provided*, *however*, that if any amendment, waiver, discharge or termination operates in a manner that treats any Holder different from other Holders, the consent of such Holder shall also be required for such amendment, waiver, discharge or termination. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the

operation of this paragraph, the holders of a majority of the Registrable Securities will have the right and power to diminish or eliminate all rights of such Holder under this Agreement.

6.2 *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address, facsimile number or electronic mail address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any Holder, at such address, facsimile number or electronic mail address as shown in the Company's records, or, until any such holder so furnishes an address, facsimile number or electronic mail address to the Company, then to and at the address of the last holder of such shares for which the Company has contact information in its records; or

(c) if to the Company, one copy should be sent to 1310 Chesapeake Terrace, Sunnyvale, CA 94089, (415) 716-4600, Attn: Chief Executive Officer, or at such other address as the Company shall have furnished to the Investors, with a copy to Michael Hall, Latham & Watkins, 135 Commonwealth Dr., Menlo Park, California 94025.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid or, if sent by facsimile, upon confirmation of facsimile transfer or, if sent by electronic mail, upon confirmation of delivery when directed to the electronic mail address set forth on the Schedule of Investors.

6.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California, without regard to principles of conflicts of law.

6.4 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

6.5 *Entire Agreement.* This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof. No party hereto shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein.

6.6 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

6.7 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

6.8 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

6.9 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

6.10 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

6.11 *Jurisdiction; Venue.* With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California).

6.12 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

6.13 *Termination Upon Change of Control.* Notwithstanding anything to the contrary herein, this Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Company held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all substantially all of the assets of the Company.

6.14 *Conflict.* In the event of any conflict between the terms of this Agreement and the Company's Certificate of Incorporation or its Bylaws, the terms of the Company's Certificate of Incorporation or its Bylaws, as the case may be, will control.

6.15 *Attorneys' Fees.* In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this

Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

ACCURAY INCORPORATED
a California corporation

By: /s/ EUAN THOMSON

Name: Euan Thomson

Title: President and CEO

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ PAUL BATE

(Signature)

Paul Bate

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ JACQUELINE CASTER/ANDREW CASTER

(Signature)

Jacqueline Caster/Andrew Caster

(Name of Investor)

Trustee/Trustee

(Name and Title of Signatory, if Applicable)
Andrew and Jacqueline Caster
Living Trust

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YANG, JAU-CHANG

(Signature)

Yang, Jau-Chang

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

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INVESTOR

/s/ ALLEN CHAO

(Signature)

Allen Chao

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ TSENG WEI-JENG

(Signature)

China United Investments Inc.

(Name of Investor)

Tseng Wei-Jeng, Director

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ JOSIE FITSIMONS

(Signature)

Josie Fitsimons

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ KAO-HSIANG WANG &
/s/ CHIUNG-JUNG WANG CHIU

(Signature)

Kao-Hsiang Wang
Chiung-Jung Wang Chiu

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YVONNE HUSON

(Signature)

Yvonne Huson

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YVONNE M. HUSON

(Signature)

Yvonne M. Huson

(Name of Investor)

Member R.S. Huson Marital Trust

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ NG SIOK KEOW

(Signature)

Ng Siok Keow

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ TENG A-HUA

(Signature)

Kingland Overseas Development Inc.

(Name of Investor)

Teng A-Hua/Managing Director

(Name and Title of Signatory, if Applicable)

For and on behalf of
KINGLAND OVERSEAS DEVELOPMENT INC.

/s/ TENG A-HUA

Authorized Signature(s)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ KING LING WONG

(Signature)

King Ling Wong and Lee Min Wong Trustees
Under Declaration of Trust Dated Oct. 5, 1990

(Name of Investor)

King Ling Wong, Trustee

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ HUAN-CHIU KUO

(Signature)

Huan-Chiu Kuo

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YAO-CHANG KUO

(Signature)

Yao-Chang Kuo

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ KOICHI MOKUDAI

(Signature)

Maruberi Corporation

(Name of Investor)

Koichi Mokudai, General Manager, Solution Business Dept.

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ NORWYN R. NEWBY

(Signature)

Norwyn R. Newby

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ PHILIP R. CONLEY
/s/ FRANCES K. CONLEY

(Signature)

Philip R. Conley
Frances K. Conley

(Name of Investor)

As Community Property

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ KUAN-MING LIN

(Signature)

PK Venture Capital Corp.
PK II Venture Capital Corp.

(Name of Investor)

Kuan-Ming Lin, President

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

PRESIDENT (BVI) INTERNATIONAL
INVESTMENT HOLDINGS LTD.

/s/ [ILLEGIBLE]

(Signature)

Name: [ILLEGIBLE]

Title:

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ GEORGE ROBINSON

(Signature)

George Robinson

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ THOMAS J. FOGARTY

(Signature)

Thomas Fogarty Separate Property Trust
Trust DTD 2/6/87

(Name of Investor)

Thomas J. Fogarty, Trustee

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ TSENG WEI-JERNG

(Signature)

UC Fund II

(Name of Investor)

Tseng Wei-Jerng, Director

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ TSENG WEI-JERNG

(Signature)

United Investments Funds

(Name of Investor)

Tseng Wei-Jerng, Director

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ TSENG WEI-JERNG

(Signature)

UNITED VENTURE CAPITAL CORPORATION

(Name of Investor)

Tseng Wei-Jerng, Director

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ S. OSTERMAIER

(Signature)

Venture Select GmbH & Co./Alpha Fonds KG

(Name of Investor)

S. Ostermaier, Managing Director

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ KNUD WOLLENBEGER

(Signature)

Knud Wollenberger

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YVONNE M. HUSON

(Signature)

Yvonne M. Huson, Trustee
Richard S. Huson Martial u/t/a 9/4/98

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Investors' Rights Agreement effective as of the day and year first above written.

INVESTOR

/s/ YVONNE M. HUSON

(Signature)

Yvonne M. Huson, Trustee
Richard S. Huson Marital Trust u/t/a 9/4/98

(Name of Investor)

(Name and Title of Signatory, if Applicable)

[Signature Page to Investors' Rights Agreement]

EXHIBIT A
INVESTORS

Prior C Holders:

Philip R. Conley and Frances K. Conley, as Community Property
Richard S. Huson Marital Trust U/T/A dated 9/4/98
Michael Kendrick
Norwyn R. Newby
David Smith
Charles Schwab & Co., Custodian FBO Yvonne Huson IRA A/C No. 1379-3311

Series A Preferred Holders:

President (BVI) International Investment Holdings Ltd.

Series A-1 Preferred Holders:

Kao-Hsiang Wang & Chiung-Jung Wang Chiu
Allen Y. Chao
President (BVI) International Investment Holdings Ltd.
Thomas J. Fogarty, Trustee of the Thomas Fogarty Separate Property Trust Dated February 6, 1987
President International Investment Holdings Ltd.
Venture Select GmbH & Co. Alpha-Fonds KG
Andrew and Jacqueline Caster Living Trust
Josie M. Fitzsimmons
George Robinson
Paul William Bate
Marubeni Venture Capital Fund I, L.P.

Series B Preferred Holders:

President International Investment Holdings Ltd.
Allen Y. Chao
Thomas J. Fogarty
Kao-Hsiang Wang & Chiung-Jung Wang Chiu

Series C Preferred Holders:

China United Investments Inc.
Kingland Overseas Development Inc.
Huan-Chiu Kuo
Yao-Chang Kuo
Maurbeni Venture Capital Fund I, L.P.
Siok Keow Ng
PK Venture Capital Corp.
Pacific Republic Securities, LLC
President (BVI) International Investment Holdings Ltd.
Taishin Venture Capital Investment Co., Ltd.
UC Fund II
United Venture Capital Corporation
Knud Wollenberger
Jau-Chang Yang

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.1

INDUSTRIAL COMPLEX LEASE
(California)

Industrial Complex:	CARIBBEAN CORPORATE CENTER
Landlord:	MP CARIBBEAN, INC.
Tenant:	ACCURAY INCORPORATED
Reference Date:	JULY 9, 2003

INDEX TO LEASE

INDUSTRIAL COMPLEX LEASE
(California)

ARTICLE 1.
DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this lease:

(a) "Landlord": MP CARIBBEAN, INC., a Delaware corporation, whose taxpayer identification number is 94-3226570.

(b) Landlord's address: c/o SSR Realty Advisors, Inc., One California Street, Suite 1400, San Francisco, California 94111, Attention: Asset Management and Legal Department.

(c) "Tenant": ACCURAY INCORPORATED, a California corporation, whose taxpayer identification number is 77-0268932.

(d) Tenant's address:

Prior to Commencement Date:	570 Del Ray Avenue Sunnyvale, California 94085
Upon Commencement Date:	1310 Chesapeake Terrace Sunnyvale, CA 94089

(e) Tenant's trade name: Accuray

(f) Tenant's guarantor: Not applicable.

(g) "Agent": South Bay Development Company, whose address is 1690 Dell Avenue, Campbell, California 95008, Attention: David Andris.

(h) "Industrial Complex": Landlord's property in the City of Sunnyvale, Santa Clara County, California, which property is commonly known as: Caribbean Corporate Center, 1310 - 1327 Chesapeake Terrace, Sunnyvale, California.

(i) "Demised Premises": that certain portion of one of the buildings (the "Building") in the Industrial Complex located at 1310 Chesapeake Terrace, Sunnyvale, California, and more particularly shown on the floor plans attached hereto as ***Exhibit "A"***, which Landlord and Tenant acknowledge and agree for all purposes of this lease to contain 40,000 square feet of rentable area.

(j) "Commencement Date": the date the Demised Premises are tendered to Tenant in their "as is" condition promptly following full execution of this lease.

"Rent Commencement Date": the earlier to occur of (i) the date Tenant commences conducting business in the Demised Premises, or (ii) October 1, 2003.

(k) "Lease term": commencing on the Commencement Date and continuing for forty-eight (48) full calendar months after the Rent Commencement Date; provided, however, that if the Rent Commencement Date is a date other than the first day of a calendar month, the lease term shall be extended by the number of days remaining in the calendar month in which the Rent Commencement Date occurs; provided, further, however, that Tenant shall have the right to renew the lease term as more particularly set forth on ***Exhibit "E"*** attached hereto.

(l) Minimum guaranteed rental shall be paid by Tenant in accordance with the following schedule:

Months		Monthly Minimum Guaranteed Rental
01 - 12:	$	24,000.00
13 - 24:	$	26,000.00
25 - 36:	$	38,000.00
37 - 48:	$	40,000.00

(m) Prepaid rental: $24,000.00, being an estimate of the initial minimum guaranteed rental for the first month of the lease term, such prepaid rental being due and payable upon execution of this lease by Tenant.

(n) Security deposit $300,000.00, such security deposit being due and payable upon execution of this lease by Tenant. See Article 8.

(o) Permitted use: Office, warehouse, light manufacturing and other legal uses related thereto, and for no other purpose whatsoever.

(p) Tenant's maximum insurance deductible: $5,000.00.

(q) "Tenant's Broker": Wayne Mascia & Associates.

(r) "Tenants Proportionate Share":

Tenants Pro Rata Share of Building Common Area Costs:	55.11%
Tenant's Pro Rata Share of Parcel Common Area Costs:	27.13%
Tenant's Pro Rata Share of Industrial Complex Common Areas Costs:	15.78%

(s) Tenant parking: 152 unreserved parking spaces.

ARTICLE 2.
GRANTING CLAUSE

2.1 Landlord leases the Demised Premises to Tenant, and Tenant leases the Demised Premises from Landlord, upon all of the terms and conditions set forth in this lease. Further, provided no event of default has occurred under this lease, Landlord agrees to make available to Tenant, at no additional charge to Tenant, on an unreserved basis in common with the other tenants of the Industrial Complex, the number of parking spaces set out in Section 1.1(s) above.

2.2 Tenant shall have the right of first opportunity more particularly described on ***Exhibit "D"*** attached hereto.

ARTICLE 3.
DELIVERY OF DEMISED PREMISES

3.1 The Demised Premises are being leased "AS IS", with Tenant accepting all defects, if any, and Landlord makes no warranty of any kind, express or implied, with respect to the Demised Premises (without imitation, Landlord makes no warranty as to the habitability, fitness or suitability of the Demised Premises for a particular purpose nor as to the absence of any toxic or otherwise hazardous substances). This Section 3.1 is subject to any contrary requirements under applicable law; however, in this regard Tenant acknowledges that it has been given the opportunity to inspect the Demised Premises and to have qualified experts inspect the Demised Premises prior to the execution of this lease.

3.2 Commencing on the Commencement Date, Tenant shall have full access to the Demised Premises in order to make preparations for its occupancy thereof, including for space planning, construction of tenant improvements, fixturization and the installation of Tenant's telephone and computer equipment and cabling and Tenant's furniture and other personal property. Tenant shall not be obligated to pay minimum guaranteed rental or any common area pass-through charges during this period preceding the Rent Commencement Date. Tenant must provide Landlord with a certificate of insurance prior to gaining possession of the Demised Premises.

3.3 If, and so long as, Tenant pays the rent and keeps, observes and performs each and every term, covenant and condition of this lease on the part of Tenant to be kept, observed and performed, Tenant shall peaceably enjoy the Demised Premises throughout the term without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the provisions of this lease.

ARTICLE 4.
RENT

4.1 Intentionally deleted.

4.2 Rental shall accrue from the Rent Commencement Date, and shall be payable to Landlord at Agent's address specified in Section 1.1(g) above or at such other address as Landlord shall so notify Tenant from time to time.

4.3 Tenant shall pay to Landlord minimum guaranteed rental in monthly installments in the amounts specified in Section 1.1(l) of this lease. The first such monthly installment shall be due and payable upon execution of this lease by Tenant, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the lease term following the Rent Commencement Date; provided that if the Rent Commencement Date is a date other than the first day of a calendar month, there shall be due and payable on or before such date as minimum guaranteed rental for the balance of such calendar month a sum equal to that proportion of the rent specified for the first full calendar month as herein provided, which the number of days from the Rent Commencement Date to the end of the calendar month during which the Rent Commencement Date shall fall bears to the total number of days in such month. Tenant agrees to pay to Landlord, if assessed by the jurisdiction in which the Industrial Complex is located, any sales, excise or other tax imposed, assessed or levied in connection with Tenant's payment of rents.

4.4 It is understood that the minimum guaranteed rental is payable on or before the first day of each calendar month following the Rent Commencement Date (in accordance with Sections 4.2 and 4.3 above), without offset or deduction of any nature. In the event any rental is not received within five (5) days after written notice, or if any rental payment is by check which is returned for insufficient funds, then in addition to the past due amount Tenant shall pay to Landlord one of the following (the choice to be at the sole option of Landlord unless one of the choices is improper under applicable law, in which event the other alternative will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of the rental then due, in order to compensate Landlord for its administrative and other overhead expenses; or (b) interest on the rental then due at the maximum contractual rate which could legally be charged in the event of a loan of such rental to Tenant (but in no event to exceed $1^{1}/_{2}$% per month), such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the rental due date and terminating with the date on which Tenant makes full payment of all amounts owing to Landlord at the time of said payment. Notwithstanding the foregoing, such five (5)-day notice period shall not be available to Tenant more than once in any twelve (12)-month period, following which (i.e. on the second (2^{nd}) such occurrence and thereafter) the late charge or interest shall be imposed immediately following failure to pay minimum guaranteed rental when due. Any such late charge or interest

payment shall be payable as additional rental under this lease, shall not be considered a waiver by Landlord of any default by Tenant hereunder, and shall be payable immediately on demand.

4.5 If Tenant fails in two (2) consecutive months to make rental payments within five (5) days after it is due, Landlord, in order to reduce its administrative costs, may require, by giving written notice to Tenant (and in addition to any late charge or interest accruing pursuant to Section 4.4 above, as well as any other rights and remedies accruing pursuant to Article 22 or Article 23 below, or any other provision of this lease or at law), that minimum guaranteed rentals are to be paid quarterly in advance instead of monthly, and that all future rental payments are to be made on or before the due date by cash, cashier's check, or money order and that the delivery of Tenant's personal or corporate check will no longer constitute a payment of rental as provided in this lease. Any acceptance of a monthly rental payment or of a personal or corporate check thereafter by Landlord shall not be construed as a subsequent waiver of said rights.

4.6 Tenant shall pay when due any and all sales taxes levied, imposed or assessed by the United States of America, the State of California, or any political subdivision thereof or other taxing authority upon the minimum guaranteed rental, additional rent and all other sums payable hereunder.

ARTICLE 5.
FINANCIAL REPORTS

5.1 Tenant shall, promptly following request by Landlord from time to time, but not more often than once per calendar year, furnish a true and accurate audited statement of its financial condition prepared in conformity with recognized accounting principles and in a form reasonably satisfactory to Landlord. In addition, Landlord may from time to time request of Tenant copies of Tenant's most recent unaudited quarterly financial statements, which shall be delivered to Landlord promptly.

ARTICLE 6.
TENANT'S RESPONSIBILITY FOR TAXES, OTHER REAL ESTATE CHARGES AND INSURANCE EXPENSES

6.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Demised Premises which taxes shall be paid when due and before any delinquency. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Demised Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

6.2 Tenant shall also be liable for Tenant's Proportionate Share (as specified in Section 1.1(r) above) of all "real estate charges" (as defined below) and "insurance expenses" (as defined below) related to the Industrial Complex or Landlord's ownership of the Industrial Complex. Tenant's obligations under this Section 6.2 shall be prorated during any partial year (i.e., the first year and the last year of the lease term). Tenant's Proportionate Share shall be adjusted as reasonably determined by Landlord in the event that the total rentable area of the buildings in the Industrial Complex shall change after the date hereof. "Real estate charges" shall include ad valorem taxes, general and special assessments, parking surcharges, any tax or charge for governmental services (such as street maintenance or fire protection) which are attributable to the transfer or transaction directly or indirectly represented by this lease, by any sublease or assignment hereunder or by other leases in the Industrial Complex or by any document to which Tenant is a party creating or transferring (or reflecting the creation or transfer of) any interest or an estate in the Demised Premises and any tax or charge which replaces or is in addition to any of such above-described "real estate charges"; real estate charges shall also include any fees, expenses or costs (including attorneys' fees, expert fees and the like) incurred by Landlord in protesting or contesting any assessments levied or the tax rate. "Real estate charges" shall not be deemed to include sales tax payable by Tenant pursuant to Section 4.6 above and

any franchise, estate, inheritance or general income tax. "Insurance expenses" shall include all premiums and other expenses incurred by Landlord for liability insurance and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Landlord, in Landlord's sole discretion, may consider appropriate) business interruption, and rent loss, earthquake and any other insurance policy which may be carried by Landlord insuring the Demised Premises, the Common Area, the Industrial Complex, or any improvements thereon.

6.3 At Landlord's sole option, Landlord and Tenant shaft attempt to obtain separate assessments for Tenant's obligations pursuant to Section 6.1 and, with respect to Section 6.2, for such of the "real estate charges" as are readily susceptible of separate assessment. To the extent of a separate assessment, Tenant agrees to pay such assessment before it becomes delinquent and to keep the Demised Premises free from any lien or attachment moreover, as to all periods of time during the lease term, this covenant of Tenant shall survive the termination of the lease. With regard to the calendar year during which the lease term expires, Landlord at its option either may bill Tenant when the charges become payable or may charge Tenant an estimate of Tenant's pro rata share of whichever charges have been paid directly by Landlord (based upon information available for the current year plus, if current year information is not adequate in itself, information relating to the immediately preceding year).

6.4 At such time as Landlord has reason to believe that at some time within the immediately succeeding twelve (12) month period Tenant will owe Landlord any amounts pursuant to one or more of the preceding sections of this Article 6, Landlord may direct that Tenant prepay monthly a pro rata portion of the prospective future payment (i.e., the prospective future payment divided by the number of months before the prospective future payment will be due). Tenant agrees that any such prepayment directed by Landlord shall be due and payable monthly on the same day that minimum guaranteed rental is due.

6.5 In the event that any payment due from Tenant to Landlord is not received within five (5) days after its due date for any reason whatsoever, or if any such payment is by check which is returned for insufficient funds, then in addition to the amount then due, Tenant shall pay to Landlord interest on the amount then due at the maximum contractual rate which could legally be charged in the event of a loan of such amount to Tenant (but in no event to exceed 1-$^{1}/_{2}$% per month), such interest to accrue continuously on any unpaid balance until paid.

ARTICLE 7.
COMMON AREA

7.1 The term "Common Area" is defined for all purposes of this lease as that part of the Industrial Complex intended for the common use of all tenants, including among other facilities (as such may be applicable to the Industrial Complex), parking areas, private streets and alleys, landscaping, curbs, loading areas, sidewalks, recreation/picnic areas, malls and promenades, lighting facilities, drinking fountains, meeting rooms, public toilets, and the like, but excluding (i) space in buildings (now or hereafter existing) designated for rental for commercial purposes, as the same may exist from time to time; (ii) streets and alleys maintained by a public authority; (iii) areas within the Industrial Complex which may from time to time not be owned by Landlord (unless subject to a cross-access agreement benefiting the area which includes the Demised Premises); and (iv) areas leased to a single-purpose user where access is restricted. In addition, although the roofs of the buildings in the Industrial Complex are not literally part of the Common Area, they will be deemed to be so included for purposes of (x) Landlord's ability to prescribe rules and regulations regarding same, and (y) their inclusion for purposes of common area maintenance reimbursements. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, signs or other improvements in the Industrial Complex. For example, and without limiting the generality of the immediately preceding sentence, Landlord may

from time to time substitute for any parking area other areas reasonably accessible to the tenants of the Industrial Complex, which areas may be elevated, surface or underground.

7.2 Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this lease, its sub-tenants, licensees and concessionaires, shall have the nonexclusive right to use the Common Area (excluding roofs of buildings in the Industrial Complex) as constituted from time to time, such use to be in common with Landlord, other tenants in the Industrial Complex and other persons permitted by Landlord to use the same, and subject to rights of governmental authorities, easements, other restrictions of record, and such reasonable rules and regulations governing use as Landlord may from time to time prescribe. For example, and without limiting the generality of Landlord's ability to establish rules and regulations governing all aspects of the Common Area, Tenant agrees as follows:

(a) Tenant shall not solicit business within the Common Area nor take any action which would interfere with the rights of other persons to use the Common Area.

(b) Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

(c) With regard to the roofs of the buildings in the Industrial Complex, use of the roofs is reserved to Landlord, or with regard to any tenant demonstrating to Landlord's satisfaction a need to use same, to such tenant after receiving prior written consent from Landlord.

7.3 Landlord shall be responsible for the operation, management and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole discretion of Landlord, but to be generally in keeping with similar industrial centers within the same geographical area as the Industrial Complex. Landlord shall be the sole determinant of the type and amount of access control services to be provided, if any. Landlord shall not be liable to Tenant, and Tenant hereby waives any claim against Landlord for (i) any unauthorized or criminal entry of third parties into the Demised Premises or Industrial Complex, (ii) any damage to persons or property, except to the extent caused by the gross negligence or willful misconduct of Landlord, or (iii) any loss of property in and about the Demised Premises or Industrial Complex from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown or insufficiency of access control services.

7.4 In addition to the rentals and other charges prescribed in this lease, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost of operation and maintenance of the Common Area which may be incurred by Landlord in its discretion (hereinafter, collectively "Common Area Charges"), including, among other costs, those for lighting, painting, cleaning, policing, inspecting, repairing and replacing; Tenant's Proportionate Share of capital expenditures and expenses incurred by Landlord to increase the operating efficiency of the Industrial Complex or to cause the Common Area to comply with applicable Regulations (as such term is defined in Section 27.1), it being agreed that the cost of such capital expenditures and installation shall be amortized over the reasonable life of the capital expenditure, with the reasonable life and amortization schedule being determined in accordance with generally accepted accounting principles consistently applied; a reasonable portion of whatever management fee Landlord pays to the property manager for the Industrial Complex; a reasonable allowance for Landlord's overhead costs and the cost of any insurance for which Landlord is not reimbursed pursuant to Section 6.2, but specifically excluding all expenses paid or reimbursed pursuant to Article 6. In addition, although the roofs of the buildings in the Industrial Complex are not literally part of the Common Area, Landlord and Tenant agree that roof maintenance, repair and replacement shall be included as a common area maintenance item to the extent not specifically allocated to Tenant under this lease nor to another tenant pursuant to its lease. With regard to capital expenditures other than the capital expenditures contemplated by the first sentence of this Section, (i) the original investment in capital improvements, i.e., upon the initial construction of the Industrial Complex, shall not be included, and (ii) improvements and replacements, to the extent capitalized on Landlord's

records, shall be included only to the extent of a reasonable depreciation or amortization (including interest accruals commensurate with Landlord's interest costs). If this lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, Tenant's reimbursement obligations under this Section 7.4 shall be prorated based upon Landlord's expenses for the entire calendar year. Tenant shall make such payment to Landlord on demand, at intervals not more frequent than monthly. Landlord may, at its option, make monthly or other periodic charges based upon the estimated annual cost of operation and maintenance of the Common Area, payable in advance but subject to adjustment after the end of the year on the basis of the actual cost for such year. Landlord has the right to establish as a reserve, such amounts as Landlord deems reasonable for the maintenance, repair and restoration of the roof and parking areas of the Industrial Complex. In the event that any payment due from Tenant to Landlord is not received within five (5) days after its due date for any reason whatsoever, or if any such payment is by check which is returned for insufficient funds, then, in addition to the amount then due, Tenant shall pay to Landlord interest on the amount then due at the maximum contractual rate which could legally be charged in the event of a loan of such amount to Tenant (but in no event to exceed 1-1/2% per month), such interest to accrue continuously on any unpaid balance until paid. Any delay or failure of Landlord in delivering any estimate or statement described in this Section 7.4 or in computing or billing Tenant's Proportionate Share of the foregoing Common Area Charges shall not constitute a waiver of Landlord's right to require an increase in rent as provided herein or in any way impair the continuing obligations of Tenant under this Section.

7.5 Landlord and Tenant agree that Tenant's Proportionate Share of the Common Area Charges will be divided into the three components set forth in Section 1.1(r) above. For the purposes of this lease, "Building Common Area Costs" shall consist of those Common Area Charges which Landlord determines pertain exclusively to the Building; "Parcel Common Area Costs" shall consist of those Common Area Charges which Landlord determines shall be shared among the buildings located on the same real property tax parcel as Tenant; and "Industrial Complex Common Area Costs" shall consist of those Common Area Charges which Landlord determines shall be shared among all the buildings at the Industrial Complex. For purposes of determining Tenant's Proportionate Share of Common Area Charges, (1) Tenant's Pro Rata Share of Building Common Area Costs shall equal a fraction the numerator of which shall be the square footage of the Premises and the denominator of which shall be the square footage of the Building; (2) Tenant's Pro Rata Share of Parcel Common Area Costs shall equal a fraction the numerator of which shall be the square footage of the Premises and the denominator of which shall be the square footage of all buildings located on the same real property tax parcel as Tenant; and (3) Tenant's Pro Rata Share of Industrial Complex Common Area Costs shall equal a fraction the numerator of which shall be the square footage of the Premises and the denominator of which shall be the square footage of all buildings at the Industrial Complex. Landlord and Tenant expressly acknowledge and agree that for purposes of calculating Tenant's payments of Common Area Charges, the percentages listed as Tenant's Pro Rata Share of Building Common Area Costs, Parcel Common Area Costs and Industrial Complex Common Area Costs in Section 1.1(r) above, respectively, are correct.

ARTICLE 8.
SECURITY DEPOSIT

8.1 Tenant acknowledges its obligation to deposit with Landlord the sum stated in Section 1.1(n) above, to be held by Landlord without interest as security for the performance by Tenant of Tenant's covenants and obligations under this lease ("Security Deposit"). Tenant agrees that such Security Deposit may be commingled with Landlord's other funds and that such Security Deposit is not an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any event of default by Tenant, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law, use such funds to the extent necessary to make

good any arrears of rentals and any other damage, injury, expense or liability caused to Landlord by such event of default, and Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not then in default hereunder, any remaining balance of such Security Deposit shall be returned by Landlord to Tenant upon termination of this lease (subject to the provisions of Section 19.6 below). Tenant hereby waives the protections of Section 1950.7(c) of the California Civil Code, as it may hereafter be amended, or similar laws of like import.

8.2 Alternatively, Tenant may fulfill its obligation to provide a Security Deposit under this lease by delivering to Landlord, either concurrently with the execution of this lease by Tenant, or at any later date during the lease term, an original irrevocable standby letter of credit (the "Letter of Credit") in the amount specified in Section 1.1(n) above, naming Landlord as beneficiary, which Landlord may draw upon to cure any default under this lease or to compensate Landlord for any damage Landlord incurs as a result of Tenant's failure to perform any of its obligations hereunder. Any such draw on the Letter of Credit shall not constitute a waiver of any other rights of Landlord with respect to such default or failure to perform. The Letter of Credit shall be issued by a major commercial bank reasonably acceptable to Landlord, with a San Francisco or San Jose service and claim point for the Letter of Credit, have an expiration date not earlier than sixty (60) days after the Expiration Date (or, in the alternative, have a term of not less than one (1) year and be automatically renewable for an additional one (1) year period unless written notice of non-renewal is given by the issuer to Landlord not later than sixty (60) days prior to the expiration thereof) and shall provide that landlord may make partial and multiple draws thereunder, up to the face amount thereof. In addition, the Letter of Credit shall provide that, in the event of Landlord's assignment or other transfer of its interest in this lease, the Letter of Credit shall be freely transferable by Landlord, without charge and without recourse, to the assignee or transferee of such interest and the bank shall confirm the same to Landlord and such assignee or transferee. The Letter of Credit shall provide for same day payment to Landlord upon the issuer's receipt of a sight draft from Landlord together with Landlord's certificate certifying that the requested sum is due and payable from Tenant and Tenant has failed to pay, and with no other conditions, and otherwise be in form and content satisfactory to Landlord. If the Letter of Credit has an expiration date earlier than sixty (60) days after the Expiration Date, then throughout the term hereof, Tenant shall provide evidence of renewal of the Letter of Credit to Landlord at least sixty (60) days prior to the date the Letter of Credit expires. If Landlord draws on the Letter of Credit pursuant to the terms hereof, Tenant shall immediately replenish the Letter of Credit or provide Landlord with an additional letter of credit conforming to the requirements of this paragraph so that the amount available to Landlord from the Letter(s) of Credit provided hereunder is the amount specified above in Section 1.1(n). Tenant's failure to deliver any replacement, additional or extension of the Letter of Credit, or evidence of renewal of the Letter of Credit, within the time specified under this lease shall entitle Landlord to draw upon the Letter of Credit then in effect. If no event of default (or breach that subsequently matures into an event of default) is outstanding at the expiration or termination of this lease, then within sixty (60) days after such expiration or termination, Landlord shall return to Tenant the Letter of Credit or the balance of the Letter of Credit proceeds then held by Landlord; provided, however, that in no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its covenants and obligations hereunder.

8.3 If Landlord liquidates the Letter of Credit as provided in the penultimate sentence of Section 8.2 above, Landlord shall hold the funds received from the Letter of Credit as security for Tenant's performance under this lease, and Landlord shall not be required to segregate such Security Deposit from its other funds, and no interest shall accrue or be payable to Tenant with respect thereto. Such funds shall be handled in a manner consistent with the terms of Section 8.1 above.

8.4 Notwithstanding the foregoing provisions of this Article 8 to the contrary, if Tenant has faithfully performed all of its obligations under this lease and is not then and has not been in default hereunder, then the amount of the Security Deposit or Letter of Credit, as applicable, may be reduced

to $150,000.00 after the occurrence of three (3) consecutive calendar quarters of profitability by Tenant, as hereafter defined, and as proven to Landlord's reasonable satisfaction following submission to Landlord by Tenant of documentation evidencing same.

8.5 Notwithstanding the foregoing provisions of this Article 8 to the contrary, if Tenant has faithfully performed all of its obligations under this lease and is not then and has not been in default hereunder, and the reduction described in Section 8.4 has occurred, then the amount of the Security Deposit or Letter of Credit, as applicable, may be reduced from $150,000.00 to $75,000 after the occurrence of two (2) additional consecutive calendar quarters of profitability by Tenant, as hereafter defined, and as proven to Landlord's reasonable satisfaction following submission to Landlord by Tenant of documentation evidencing same.

8.6 For the purposes of Sections 8.4 and 8.5 above, "consecutive calendar quarters of profitability by Tenant" shall be deemed to have been achieved if either of the following shall occur:

(a) Tenant is profitable for three (3) or two (2) consecutive calendar quarters, as applicable; or

(b) If Tenant is *not* profitable for one (1) [and only one] of the three (3) or two (2) consecutive calendar quarters, as applicable, but Tenant is sufficiently profitable in the calendar quarter immediately following it such that the sum of the net loss in the unprofitable calendar quarter plus the net income in the succeeding calendar quarter equals a positive result.

The calendar quarter preceding the Commencement Date (i.e., ending on June 30, 2003), if profitable, may count toward the three (3) calendar quarters required for Section 8.4 above.

ARTICLE 9.
USE AND CARE OF DEMISED PREMISES

9.1 The Demised Premises shall be used and occupied by Tenant solely for the permitted use specified in Section 1.1(o) above and for no other purpose. Tenant, at its sole cost and expense, shall obtain and keep in effect during the term, all permits, licenses and other authorizations necessary to permit Tenant to use and occupy the Demised Premises for the permitted use. Without limiting the generality of the foregoing, Tenant shall not use or store any gasoline or flammable or so called "Red Label materials in or about the Demised Premises. All equipment used within the Demised Premises shall be subject to approval by Landlord's insurance carriers and shall be Underwriters Laboratory or Factory Mutual approved for the uses intended, evidence of which shall be furnished to Landlord upon request. Tenant shall not operate any machinery or equipment in the Demised Premises which, in Landlord's sole discretion, shall cause any excessive noise, vibration, damage or disturbance to the other tenants in the Industrial Complex.

9.2 Tenant shall take good care of the Demised Premises and keep the same free from waste at all times. Tenant shall not over-load the floors in the Demised Premises, nor deface or injure the Demised Premises; provided, however, that Landlord and Tenant agree that if Tenant needs to reinforce or install anchors in the flooring in portions of the Demised Premises to accommodate Tenant's permitted use, Landlord will not unreasonably withhold its consent to Tenant's request for approval of same nor will Landlord require Tenant to remove at termination any such anchors or reinforcement which, after Tenant restoration, do not leave holes in the floor or cause the floor surface to be uneven. Tenant shall keep the Demised Premises and all sidewalks, service-ways and loading areas adjacent to the Demised Premises neat, clean and free from dirt, rubbish, ice or snow at all times. Tenant shall store all trash and garbage within the Demised Premises or in a trash dumpster or similar container approved by Landlord as to type, location and screening; and Tenant shall arrange for the regular pick-up of such trash and garbage at Tenant's expense (unless Landlord finds its necessary to furnish such a service, in which event Tenant shall be charged an equitable portion of the total of the charges to all tenants using the service). Receiving and delivery of goods and merchandise and removal

of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Industrial Complex.

ARTICLE 10.
MAINTENANCE AND REPAIR OF DEMISED PREMISES

10.1 Landlord shall keep the foundation, the exterior walls (except plate glass; windows, doors and other exterior openings; window and door frames, molding, closure devices, locks and hardware; special store fronts; lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installations, equipment and fixtures; signs, placards, decorations or other advertising media of any type; and interior painting or other treatment of the interior side of the exterior walls) and the roof (subject to the second sentence in Section 7.4 above) of the Demised Premises in good repair. Landlord, however, shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, contractors, employees, subtenants, invitees, customers, licensees and concessionaires (including, but not limited to, roof leaks resulting from Tenant's installation of air conditioning equipment or any other roof penetration or placement); and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Article 17 and Article 18 of this lease. In the event that the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall have a reasonable time after receipt by Landlord of such written notice in which to make such repairs. Landlord shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused due to any work performed in the Demised Premises or in the Industrial Complex pursuant to Landlord's rights and obligations under this lease, so long as the work is performed without gross negligence or willful misconduct

10.2 Tenant shall keep the Demised Premises in good, clean and habitable condition and shall at its sole cost and expense keep the Demised Premises free of insects, rodents, vermin and other pests and make all needed repairs and replacements, including, replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of Section 10.1, Article 17 and Article 18. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the repair and replacement in accordance with all applicable Regulations (as defined in Section 27.1 below) of all lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installations, equipment and fixtures and also include all utility repairs in ducts, conduits, pipes and wiring, and any sewer stoppage located in, under and above the Demised Premises, regardless of when or how the defect or other cause for repair or replacement occurred or became apparent; provided, however, that as to the maintenance and repair of the HVAC equipment in the Demised Premises, Landlord shall have the option of contracting directly with an HVAC servicing company for any such work and charging Tenant for all costs thereof. If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice delivered to Tenant by Landlord, Landlord may at its option make such repairs without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs and Tenant shall pay to Landlord upon demand, as additional rental hereunder, the cost of such repairs plus interest at the maximum contractual rate which could legally be charged in the event of a loan of such payment to Tenant (but in no event to exceed 1-$^{1}/_{2}$% per month), such interest to accrue continuously from the date of payment by Landlord until repayment by Tenant At the expiration of this lease, Tenant shall surrender the Demised Premises in good condition, excepting reasonable wear and tear and losses required to be restored by Landlord in Section 10.1, Article 17 and Article 18 of this lease.

10.3 Tenant waives the right to make repairs at Landlords expense under Sections 1941 and 1942 of the California Civil Code and all other laws now or hereafter in effect.

ARTICLE 11.
ALTERATIONS

11.1 Tenant shall not make any alterations, additions or improvements to the Demised Premises (collectively, the "Alterations") without the prior written consent of Landlord, except for the installation of unattached, movable trade fixtures which may be installed without drilling, cutting or otherwise defacing the Demised Premises. Tenant shall furnish complete plans and specifications to Landlord at the time it requests Landlord's consent to any Alterations if the desired Alterations (i) will affect the Industrial Complex's mechanical, electrical, plumbing or life safety systems or services, or (ii) will affect any structural component of the Demised Premises or the Industrial Complex, or (iii) will require the filing of plans and specifications with any governmental or quasi-governmental agency or authority, or (iv) will cost in excess of Twenty-Five Thousand Dollars ($25,000.00). Subsequent to obtaining Landlord's consent and prior to commencement of the Alterations, Tenant shall deliver to Landlord any building permit required by applicable law and a copy of the executed construction contract(s). Tenant shall reimburse Landlord with ten (10) days after the rendition of a bill for all of Landlord's actual out-of-pocket costs incurred in connection with any Alterations, including, without limitation, all management, engineering, outside consulting, and construction fees incurred by or on behalf of Landlord for the review and approval of Tenant's plans and specifications and for the monitoring of construction of the Alterations. If Landlord consents to the making of any Alterations, such Alterations shall be made by Tenant at Tenant's sole cost and expense by a contractor approved in writing by Landlord, such approval not to be unreasonably withheld. Tenant shall give Landlord not less than ten (10) days advance written notice of the commencement of Tenant's Alterations to enable Landlord to post and record notices of nonresponsibility. Tenant shall require its contractor to maintain insurance in such amounts and in such form as Landlord may require. Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by Tenant in connection with the Demised Premises shall be completed in accordance with plans and specifications which must be approved by Landlord, shall be carried out in a good, workmanlike and prompt manner and in accordance with the provisions of ***Exhibit "C"*** attached hereto, shall comply with an applicable Regulations of the authorities having jurisdiction thereof, and shall be subject to supervision by Landlord or its employees, agents or contractors. Without limiting the generality of the immediately preceding sentence, any installation or replacement of Tenant's heating or air conditioning equipment must be effected strictly in accordance with Landlord's instructions, the Clean Air Act and any other applicable Regulations. Without Landlord's prior written consent, Tenant shall not use any portion of the Common Areas either within or without the Industrial Complex in connection with the making of any Alterations. If the Alterations which Tenant causes to be constructed result in Landlord being required to make any alterations and/or improvements to other portions of the Industrial Complex in order to comply with any applicable Regulations, then Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in making such alterations and/or improvements. Any Alterations made by Tenant shall become the property of Landlord upon installation and shall remain on and be surrendered with the Demised Premises upon the expiration or sooner termination of this lease; provided, however, that Tenant shall, upon demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence remove all or any portion of any Alterations made by Tenant which are requested by Landlord to be removed and repair and restore the Demised Premises in a good and workmanlike manner to their original condition, reasonable wear and tear excepted. Notwithstanding the foregoing, at Tenant's request, Landlord shall advise Tenant at the time of Landlord's approval of any Alteration requested by Tenant whether Landlord shall require that the Alteration be removed by Tenant from the Demised Premises at the expiration or earlier termination of the lease term; provided, however, that in all events Tenant shall be obligated to remove the demonstration cell and the light lead shielding around same.

11.2 All construction work done by Tenant within the Demised Premises shall be performed in a good and workmanlike manner with new materials of first-class quality, lien-free and in compliance

with all governmental requirements and Regulations, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Industrial Complex. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from such work, and Tenant shall, if requested by Landlord, furnish a bond or other security satisfactory to Landlord against any such loss, liability or damage.

11.3 In the event Tenant uses a general contractor to perform construction work within the Demised Premises, Tenant shall, prior to the commencement of such work, require said general contractor to execute and deliver to Landlord a waiver and release of any and all claims against Landlord and liens against the Industrial Complex to which such contractor might at any time be entitled. The delivery of the waiver and release of lien within the time period set forth above shall be a condition precedent to Tenant's ability to enter on and begin its construction work at the Demised Premises and, if applicable, to any reimbursement from Landlord for its construction work.

11.4 Nothing contained in this lease shall be construed as constituting the consent or request of Landlord, express or implied, to or for the performance by any contractor, laborer, materialman or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Demised Premises or any part thereof. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to any portion of the Demised Premises are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same. Tenant and any subtenants shall have no power to do any act or make any contract which may create or be the foundation of any lien, mortgage or other encumbrance upon the reversionary or other estate of Landlord, or any interest of Landlord in the Demised Premises. NOTICE IS HEREBY GIVEN THAT LANDLORD IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR TO ANYONE HOLDING THE DEMISED PREMISES OR ANY PART THEREOF, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO THE DEMISED PREMISES.

11.5 In the event that Landlord elects to remodel all or any portion of the Industrial Complex, Tenant will cooperate with such remodeling, including Tenant's tolerating temporary inconveniences (and even the temporary removal of Tenant's signs in order to facilitate such remodeling, as it may relate to the exterior of the Demised Premises).

ARTICLE 12.
LANDLORD'S RIGHT OF ACCESS

12.1 Landlord and Landlord's agents and representatives shall have the right to enter the Demised Premises at any time in case of an emergency, and at all reasonable times for any purpose permitted pursuant to the terms of this lease, including, but not limited to, examining the Demised Premises; making such repairs or alterations therein as may be necessary or appropriate in Landlord's sole judgment for the safety and preservation thereof; erecting, installing, maintaining, repairing or replacing wires, cables, conduits, vents, ducts, risers, pipes, HVAC equipment or plumbing equipment running in, to or through the Demised Premises; showing the Demised Premises to prospective purchasers or mortgagees and during the last year of this lease, prospective tenants; and posting notices of nonresponsibility.

12.2 If requested in writing by Landlord, Tenant shall give Landlord a key for all of the doors for the Demised Premises, excluding Tenant's vaults, safes and files. Landlord shall have the right to use any and all means to open the doors to the Demised Premises in an emergency in order to obtain entry thereto without liability to Tenant therefor. Any entry to the Demised Premises by Landlord by any of

the foregoing means, or otherwise, shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Demised Premises, or an eviction, partial eviction or constructive eviction of Tenant from the Demised Premises or any portion thereof, and shall not relieve Tenant of its obligations hereunder.

ARTICLE 13.
SIGNS; STORE FRONTS

13.1 Tenant shall not place or permit to be placed any signs upon (i) the roof of the Demised Premises, or (ii) the Common Areas or any exterior area of the Industrial Complex without Landlord's prior written approval which approval shall not be unreasonably withheld or delayed provided any proposed sign for the Demised Premises is placed only in those locations as may be designated by Landlord, complies with the sign criteria promulgated by Landlord from time to time, and complies with applicable city ordinances. Upon request of Landlord, Tenant shall immediately remove any sign, advertising material or lettering which Tenant has placed or permitted to be placed upon the exterior or interior surface of any door or window or at any point inside the Demised Premises, on the exterior of the Industrial Complex if required in connection with any cleaning, maintenance or repairs to the Industrial Complex or which, in Landlord's reasonable opinion, is of such a nature as to not be in keeping with the standards of the Industrial Complex and if Tenant fails to do so, Landlord may without liability remove the same at Tenant's expense. Tenant shall comply with such regulations as may from time to time be promulgated by Landlord governing signs, advertising material or lettering of an tenants in the Industrial Complex.

ARTICLE 14.
UTILITIES

14.1 Tenant shall obtain all water, electricity, sewerage, gas, telephone and other utilities directly from the public utility company furnishing same. Any meters required in connection therewith shall be installed at Tenant's sole cost. Tenant shall pay all utility deposits and fees, and all monthly service charges for water, electricity, sewage, gas, telephone and any other utility services furnished to the Demised Premises during the term of this lease. In the event any such utilities are not separately metered on the Commencement Date, then until such time as such services are separately metered, Tenant shall pay Landlord Tenant's equitable share of the cost of such services, as determined by Landlord. If for any reason the use of any utility is measured on a meter(s) indicating the usage of Tenant and other tenants of the Industrial Complex. Tenant and such other tenants shall allocate the cost of such utility amongst themselves and shall each be responsible for the payment of its allocable share. Landlord shall furnish and install all piping, feeders, risers and other connections necessary to bring utilities to the perimeter walls of the Demised Premises. Anything to the contrary notwithstanding, Tenant shall remain obligated for the payment of Tenant's pro rata share of any heating costs and/or other utilities or services furnished to the Common Areas pursuant to Section 7.4.

14.2 Tenant shall have the right to use the existing heating, air conditioning and ventilation equipment in the Demised Premises, if any. All such equipment shall be maintained, repaired and replaced, as necessary, by Tenant at its sole expense and shall be surrendered by Tenant to Landlord at the end of the term of this lease together with the Demised Premises. Landlord makes no representation or warranty as to the condition or capacity of such equipment. Landlord shall have no obligation whatsoever to provide the Demised Premises with any additional heat, air conditioning, ventilation or hot water.

14.3 Landlord shall not be liable for any interruption whatsoever, nor shall Tenant be entitled to an abatement or reduction of rent on account thereof, in utility services not furnished by Landlord, nor for interruptions in utility services furnished by Landlord which are due to fire, accident, strike, acts of

God or other causes beyond the control of Landlord or which are necessary or useful in connection with making any alterations, repairs or improvements.

14.4 Tenant shall not install any equipment which exceeds or overloads the capacity of the utility facilities serving the Demised Premises.

ARTICLE 15.
INSURANCE COVERAGES

15.1 Landlord shall procure and maintain throughout the term of this lease a policy or policies of insurance, at its sole cost and expense (but subject to Article 6 above), causing the industrial Complex to be insured under standard fire and extended coverage insurance (excluding hurricane and storm insurance unless readily obtainable at commercially reasonable rates) and liability insurance (plus whatever endorsements or special coverages Landlord, in its sole discretion, may consider appropriate), to the extent necessary to comply with Landlord's obligations pursuant to other provisions of this lease. All payments for losses thereunder shall be made solely to Landlord. If the annual premiums charged to Landlord shall exceed the standard rates because Tenant's operations, the contents of the Demised Premises, or improvements made to the Demised Premises beyond standard improvements result in extra-hazardous exposure, Tenant shall pay the excess amount of the premium upon demand therefor by Landlord.

15.2 Tenant shall procure and maintain throughout the term of this lease, at its sole cost and expense, all of the following insurance coverages:

(a) Commercial General Liability Insurance providing coverage for bodily injury (including death), property damage and products liability insurance (where such exposure exists). This policy shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Tenant's obligations under Section 16.2 and Article 21 hereof. Such insurance shall have a combined single limit of not less than Three Million Dollars ($3,000,000) per occurrence, or such greater amount as Landlord may from time to time require. If Tenant uses vehicles, owned and non-owned, in any way to carry out business on or about the Industrial Complex, Tenant shaft also maintain Motor Vehicle Liability Insurance; such insurance shall have a combined single limit of not less than One Million Dollars ($1,000,000) for bodily injury and property damage.

(b) "All Risk" coverage insurance covering Tenant's personal property, fixtures, improvements, wall coverings, floor coverings, window coverings, signs, alterations, furniture, furnishings, equipment, lighting, ceilings, heating, ventilation and air conditioning equipment and interior plumbing against loss or damage by fire, flood, windstorms, hail, earthquakes, explosion, riot, damage from aircraft and vehicles, smoke damage, vandalism and malicious mischief and such other risks as are from time to time covered under "extended coverage" endorsements and special extended coverage endorsements commonly known as "all risks" endorsements, containing the waiver of subrogation required in Section 16.3 of this lease and in an amount equal to the full replacement value thereof, with business interruption insurance covering the Demised Premises. Replacement value is understood to mean the cost to replace without deduction for depreciation.

(c) State Worker's Compensation Insurance in the statutorily mandated limits.

(d) Employer's Liability Insurance with limits of not less than One Hundred Thousand Dollars ($100,000) for bodily injury per accident and each disease, per employee, and a total combined limit for bodily injury in amounts not less than One Hundred Thousand ($100,000) per accident and Five Hundred Thousand ($500,000) per each disease, or such greater amount as Landlord may from time to time require.

(e) Plate Glass Insurance.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Tenant for its acts or omissions as provided in this lease. All of the foregoing insurance policies (with the exception of Worker's Compensation Insurance to the extent not available under applicable law) shall name Landlord, SSR Realty Advisors, Inc., the Agent identified in Section 1.1(g), any mortgagee, the managing agent for the Industrial Complex, and such other parties as Landlord shall from time to time designate, as additional insureds as their respective interests may appear, through an ISO Additional Insured Endorsement CG20261185 or equivalent, and shall provide that any loss shall be payable to Landlord and such other additional insured parties as their respective interests may appear. All insurance required hereunder shall be placed with companies which are rated A:VII or better by Best's Insurance Guide (or such other comparable publication if Best's is no longer published) and which are licensed to do business in the State of California. All such policies shall be written as primary policies with deductibles not to exceed the amount specified in Section 1.1(p) above: provided, however, that the deductible for the Plate Glass Insurance shall not exceed Two Hundred Fifty Dollars ($250). Any other policies, including Landlord's policy, will serve as excess coverage. Tenant shall deliver duplicate original copies of all such policies and all endorsements thereto (or certificates evidencing that the required insurance coverages and endorsements, including waiver of subrogation, are in full force and effect) to Landlord, prior to the Commencement Date, or, in the case of renewals thereto, fifteen (15) days prior to the expiration of the prior insurance policy, together with evidence that (1) such policies are fully paid for, and (2) no cancellation, material change or non-renewal thereof shall be effective except upon thirty (30) days' prior written notice by registered mail from the insurer to Landlord, as well as to Landlord's managing agent (at the address for the payment of rent set forth in Section 4.2 above). Whenever, in Landlord's reasonable judgment, good business practice or change in conditions indicate a need for additional or different types of insurance, Tenant shall, within fifteen (15) days of receipt of Landlord's request therefor, obtain the insurance at its own expense. If Tenant should fail to comply with the foregoing requirements relating to insurance, Landlord may obtain such insurance and Tenant shall pay to Landlord on demand as additional rental hereunder the premium cost thereof plus interest at the maximum contractual rate (but in no event to exceed 1-$^{1}/_{2}$% per month) from the date of payment by Landlord until repaid by Tenant.

15.3 In addition to the foregoing, Tenant shall obtain certificates of insurance evidencing Commercial General Liability Insurance, including Completed Operations, Motor Vehicle Liability Insurance, Worker's Compensation Insurance and Employer's Liability Insurance in the amounts required above from any contractor or subcontractor engaged by Tenant for repairs or maintenance during the lease term, and such liability insurance shall name Landlord, SSR Realty Advisors, Inc., South Bay Development Company or any successor property manager or managing agent for the Complex, any mortgagee, and such other parties as Landlord shall from time to time designate, as additional insureds as their respective interests may appear, through an ISO Additional Insured Endorsement CG20261185 or equivalent, and shall provide that any loss shall be payable to Landlord and such other additional insured parties as their respective interests may appear.

ARTICLE 16.
WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBLETTING

16.1 Landlord and Landlord's agents and employees shall not be liable to Tenant, nor to Tenant's employees, agents, contractors, subcontractors, invitees, subtenants or licensees, nor to any other person whomsoever, for any injury to person or damage to property caused by the Demised Premises or other portions of the Industrial Complex becoming out of repair or by defect or failure of any structural element of the Demised Premises or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Demised Premises (except where due to Landlord's willful failure to make repairs required to be made

by Landlord hereunder, after the expiation of a reasonable time after written notice to Landlord of the need for such repairs), nor shall Landlord be liable to Tenant, nor to Tenant's employees, agents, contractors, subcontractors, invitees, subtenants or licensees, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Industrial Complex or of any other persons whomsoever, excepting only duly authorized employees and agents of Landlord. Landlord shall not be held responsible in any way on account of any construction, repair or reconstruction (including widening) of any private or public roadways, walkways or utility lines.

16.2 Landlord shall not be liable to Tenant or to Tenant's employees, agents, contractors, subcontractors, invitees, subtenants or licensees, or to any other person whomsoever, for any injury to person or damage to property on or about the Demised Premises or the Common Area caused by the negligence or misconduct of Tenant, its employees, agents, contractors, subcontractors, invitees, subtenants or licensees, or of any other person entering the Industrial Complex under express or implied invitation of Tenant (with the exception of invitees in the Common Area), or arising out of the use of the Demised Premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations under this lease; and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury. Furthermore, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liability, claims, demands, causes of action of any kind and nature arising or growing out of or in any way connected with Tenant's use, occupancy, management or control of the Demised Premises and Tenant's operations or activities in the Industrial Complex. Upon notice from Landlord, Tenant shall defend any such claim, demand, cause of action or suit referenced hereinabove at Tenant's expense by counsel satisfactory to Landlord in its sole discretion.

16.3 Landlord and Tenant each hereby release the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by a casualty which is insurable under standard fire and extended coverage insurance; provided, however, that this mutual waiver shall be applicable only with respect to a loss or damage occurring during the time when property insurance policies, which are readily available in the marketplace, contain a clause or permit an endorsement to the effect that any such release shall not adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; provided, further, that this release shall not be applicable to the portion of any damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 16.3 is cumulative with any releases or exculpation's which may be contained in other provisions of this lease. Landlord and Tenant agree that all policies of insurance obtained by them pursuant to the terms of this lease shall contain provisions or endorsements thereto waiving the insurer's rights of subrogation with respect to claims against the other, and, unless the policies permit waiver of subrogation without notice to the insurer, each shall immediately notify its insurance companies of the existence of the waiver and indemnity provisions set forth in this lease. The provisions of this Article 16 shall survive the expiration or sooner termination of this lease.

ARTICLE 17.
DAMAGES BY CASUALTY

17.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Demised Premises by fire or other casualty.

17.2 In the event that the Demised Premises shall be damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Demised Premises. In the event (a) the Building is

destroyed or substantially damaged by a casualty not covered by Landlord's insurance, or (b) such Building is destroyed or rendered untenantable to an extent in excess of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance, or (c) the holder of a mortgage, deed of trust or other lien on such Building at the time of the casualty elects, pursuant to such mortgage, deed of trust or other lien, to require the use of all or part of Landlord's insurance proceeds in satisfaction of all or part of the indebtedness secured by the mortgage, deed of trust or other lien, or (d) the Demised Premises shall be damaged to the extent of fifty percent (50%) or more of the cost of replacement, then Landlord may elect either to terminate this lease or to proceed to rebuild and repair the Demised Premises. Landlord shall give written notice to Tenant of such election within sixty (60) days after the occurrence of such casualty, which notice shall include Landlord's reasonable estimate of the time needed to substantially restore the Demised Premises ("Landlord's Estimate"), and, if Landlord elects to rebuild and repair, Landlord shall proceed to do so with reasonable diligence and at its sole cost and expense. Notwithstanding anything to the contrary in this Section 17.2, in the event (i) the Building is destroyed or rendered untenantable or (ii) the Demised Premises are substantially damaged and the repair of such damage will not (per Landlord's Estimate) be substantially completed within two hundred forty (240) days of the casualty, then Tenant may elect to terminate this lease without penalty by notice given to Landlord within fifteen (15) days of Tenant's receipt of Landlord's Estimate (or prior thereto in the event the Demised Premises are destroyed or rendered untenantable). In the event that Landlord should fail to substantially complete such repairs and restoration by the date set forth in Landlord's Estimate, Tenant may elect to terminate this lease by written notice to Landlord ("Tenant's Termination Notice"), such termination to be effective thirty (30) days after Landlord's receipt of such notice; provided, however, that if within ten (10) days of Landlord's receipt of Tenant's Termination Notice, Landlord shall notify Tenant that it estimates that such repairs and material restoration can be completed within thirty (30) days after the original date estimated by Landlord, then Tenant's Termination Notice shall be void and of no further force and effect. If, however, Landlord does not complete such repairs and material restoration within such thirty (30) day period, Tenant may at its option and as its sole remedy for such delay terminate this lease by delivering written notice to Landlord, within ten (10) days after the expiration of said period of time, whereupon the lease shall end on the date of such notice or such later date fixed in such notice as if the date of such notice was the date originally fixed in this lease for the expiration of the term.

17.3 Landlord's obligation to rebuild and repair under this Article 17 shall in any event be limited to restoring the Demised Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures, signs and equipment installed by Tenant. Tenant agrees that promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair and replace all alterations, additions, improvements, fixtures, signs and equipment installed by Tenant.

17.4 Tenant agrees that during any period of reconstruction or repair of the Demised Premises, it will continue the operation of its business within the Demised Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, the minimum guaranteed rental shall be reduced to such extent as may be fair and reasonable under the circumstances; however, there shall be no abatement of the charges provided for herein.

17.5 Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) and the provisions of any successor or other law of like import

ARTICLE 18.
EMINENT DOMAIN

18.1 If more than thirty percent (30%) of the floor area of the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this lease shall terminate and the rent shall be

abated during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

18.2 If less than thirty percent (30%) of the floor area of the Demised Premises should be taken as aforesaid, this lease shall not terminate; however, the minimum guaranteed rental payable hereunder during the unexpired portion of this lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, Landlord shall make all necessary repairs or alterations to the remaining premises required to make the remaining portions of the Demised Premises an architectural whole, but in no event shall Landlord be required to expend an amount greater than the award actually received by Landlord in connection with such taking.

18.3 If any part of the Common Area should be taken as aforesaid, this lease shall not terminate, nor shall the rent payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the area of the Common Area remaining following such taking plus any additional parking area provided by Landlord in reasonable proximity to the Industrial Complex shall be less than seventy percent (70%) of the area of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

18.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Demised Premises or Common Area shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for Tenant's moving and relocation expenses or for the loss of Tenant's fixtures and other tangible personal property if a separate award for such items is made to Tenant as long as such separate award does not reduce the amount of the award that would otherwise be awarded to Landlord.

18.5 The rights contained in this Article 18 shall be Tenant's sole and exclusive remedy in the event of a taking or condemnation. Each party waives the provisions of Sections 1265.130 and 1265.150 of the California Code of Civil Procedure and the provisions of any successor or other law of like import.

18.6 Notwithstanding anything to the contrary, Landlord may terminate this lease with no further liability to Tenant if (i) fifty percent (50%) or more of the gross leasable area of the Industrial Complex is taken or (ii) if following any taking, Landlord's mortgagee elects to require Landlord to apply all or a portion of such award to the outstanding indebtedness.

ARTICLE 19.
ASSIGNMENT AND SUBLETTING

19.1 Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Demised Premises or any part thereof, or grant any license, concession or other right of occupancy of any portion of the Demised Premises without the prior written consent of Landlord. Landlord agrees that it will not withhold consent in a wholly unreasonable and arbitrary manner (as further explained in Section 29.4 of this lease); however, in determining whether or not to grant its consent, Landlord shall be entitled to take into consideration factors such as Landlord's desired tenant mix and the reputation and net worth of the proposed transferee. Further, Landlord shall not be required to consent to any assignment or sublease that would result in a violation of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Any purported assignment or sublease that would result in a violation of ERISA shall be void and of no effect. Landlord shall be entitled to charge Tenant a reasonable fee for processing Tenant's request. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. In all events, Landlord can refuse to consent to an assignment

or sublease if there shall exist any uncured default of Tenant or a matter which will become a default with the passage of time.

19.2 If Tenant is a corporation, partnership or other entity and if at any time during the term of this lease the person or persons who own a majority of either the outstanding voting rights or the outstanding ownership interests of Tenant at the time of the execution of this lease cease to own a majority of such voting rights or ownership interests (except as a result of transfers by devise or descent), the loss of a majority of such voting rights or ownership interests shall be deemed an assignment of this lease by Tenant and, therefore, subject in all respects to the provisions of Section 19.1 above. The previous sentence shall not apply, however, if at the time of the execution of this lease, Tenant is a corporation and the outstanding voting shares of capital stock of Tenant are listed on a recognized security exchange or over-the-counter market. Furthermore, the disposition and acquisition of shares in the initial public offering of the stock of the Tenant originally named herein, or the private placement of the stock of the Tenant originally named herein in connection with equity financing purposes only, shall not be deemed a violation of the terms of this Section 19.2.

19.3 Notwithstanding anything to the contrary contained herein, and without prejudice to Landlord's right to require a written assumption from each assignee, any person or entity to whom this lease is assigned including, without limitation, assignees pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Paragraph 101, *et seq.* (the "Bankruptcy Code"), shall automatically be deemed, by acceptance of such assignment or sublease or by taking actual or constructive possession of the Demised Premises, to have assumed all obligations of Tenant arising under this lease effective as of the earlier of the date of such assignment or sublease or the date on which the assignee or sublessee obtains possession of the Demised Premises. In the event this lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord and shall remain the exclusive property of Landlord and not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money or other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

19.4 Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this lease shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this lease (even if future assignments and sub-lettings occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Tenant's approval has been obtained for such future assignments and sublettings). Moreover, in the event that the rental due and payable by a sublessee (or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this lease, or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this lease, then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case may be. Finally, in the event of an assignment or subletting, it is understood and agreed that all rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord, to be forwarded immediately to Landlord without offset or reduction of any kind; and upon election by Landlord such rentals shall be paid directly to Landlord as specified in Section 4.2 of this lease (to be applied as a credit and offset to Tenant's rental obligation).

19.5 Tenant shall not mortgage, pledge or otherwise encumber its interest in this lease or in the Demised Premises.

19.6 In the event of the transfer and assignment by Landlord of its interest in this lease and in the Building to a person expressly assuming Landlord's obligations under this lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest and Landlord shall thereby be discharged of any further obligation relating thereto.

19.7 Notwithstanding anything to the contrary contained herein, Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or assignment, to terminate this lease, or in the case of a proposed subletting of less than the entire Demised Premises for substantially all of the remaining term of this lease, to recapture the portion of the Demised Premises to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised by Landlord giving Tenant written notice within twenty (20) days following Landlord's receipt of Tenant's written notice as required above. If this lease shall be terminated with respect to the entire Demised Premises, the term shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this lease for the expiration of the term. If Landlord recaptures only a portion of the Demised Premises (in the event of a proposed subletting of less than the entire Demised Premises as above described), the minimum guaranteed rental during the unexpired term shall abate, proportionately, based on the minimum guaranteed rental due as of the date immediately prior to such recapture.

19.8 Tenant hereby waives any suretyship defenses it may now or hereafter have to an action brought by Landlord including those contained in Sections 2787 through 2856, inclusive, 2899 and 3433 of the California Civil Code, as now or hereafter amended, or similar laws of like import.

ARTICLE 20.
SUBORDINATION; ATTORNMENT; ESTOPPELS

20.1 Tenant accepts this lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter placed upon the Industrial Complex or any portion of the Industrial Complex which includes the Demised Premises, and to any renewals, modifications and extensions

thereof and this subordination shall be self operative and no further instrument of subordination is needed. Tenant agrees that any mortgagee shall have the right at any time to subordinate its mortgage, deed of trust or other lien to this lease; provided, however, notwithstanding that this lease may be (or is made to be) superior to a mortgage, deed of trust or other lien, the mortgagee shall not be liable for prepaid rentals, security deposits and claims accruing during or with respect to Landlord's ownership, any amendment or modification made to this lease without its prior written consent or any offsets or claims against Landlord; further provided that the provisions of a mortgage, deed of trust or other lien relative to the right of the mortgagee with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) and provisions relative to proceeds arising from insurance payable by reason of damage to or destruction of the Demised Premises shall be prior and superior to any contrary provisions contained in this instrument with respect to the payment or usage thereof. Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust or other lien hereafter placed upon the Demised Premises or the Industrial Complex as a whole, and Tenant agrees upon demand to execute such further instruments subordinating this lease as Landlord may request. If the holder of any mortgage, indenture or deed of trust or similar instrument (each a "Mortgagee") succeeds to Landlord's interest in the Demised Premises, Tenant shall, upon request of any such Mortgagee, automatically become the tenant of and attorn to and recognize such Mortgagee as the landlord under this lease and will pay to it all rents and other amounts payable by Tenant under this lease, in accordance with the applicable terms of this lease. Notwithstanding that the foregoing provisions of this Section are self-operative, upon request of Landlord or any Mortgagee, Tenant shall execute and deliver to Landlord and to such Mortgagee a subordination and attornment agreement in recordable form confirming the foregoing and otherwise in form and substance acceptable to Landlord and such Mortgagee.

20.2 Tenant may not exercise any remedies for default by Landlord hereunder unless and until Landlord and the holder(s) of any indebtedness secured by mortgage, deed of trust or other lien on the Demised Premises shall have received written notice of such default and a reasonable time (not less than 60 days) shall thereafter have elapsed without the default having been cured.

20.3 Tenant agrees that it will from time to time, within seven (7) days of receipt of written request from Landlord, execute and deliver to Landlord a written statement addressed to Landlord (and to such other parties as may be designated by Landlord), which statement shall identify Tenant and this lease, shall certify that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Landlord is not in default as to any obligations of Landlord under this lease (or if Landlord is in default, specifying any default), shall confirm Tenant's agreements contained above in this Article 20, and shall contain such other information or confirmations as Landlord may reasonably require. Landlord is hereby irrevocably appointed and authorized as the agent and attorney-in-fact of Tenant to execute and deliver any such written statement on Tenant's behalf if Tenant fails to do so within seven (7) days after Tenant's receipt of a written request from Landlord to Tenant.

ARTICLE 21.
TENANT'S INDEMNIFICATION

21.1 Tenant shall indemnify, defend and hold harmless Landlord, Landlord's asset manager, Landlord's subasset manager, Landlord's partners, any subsidiary or affiliate of Landlord and the officers, directors, shareholders, partners, employees, managers, independent contractors, attorneys and agents of any of the foregoing (collectively, the "Indemnitees") from and against any and all claims, demands, causes of action, judgments, costs and expenses, and all losses and damages (including consequential and punitive damages) arising from Tenant's use of the Demised Premises or from the conduct of its business or from any activity, work, or other acts or things done, permitted or suffered by Tenant in or about the Demised Premises, and shall further indemnify, defend and hold harmless the

Indemnitees from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this lease, or arising from any act, omission or negligence or willful or criminal misconduct of Tenant, or any officer, agent, employee, independent contractor, guest, or invitee thereof, and from all costs, attorneys' fees and disbursements, and liabilities incurred in the defense of any such claim or any action or proceeding which may be brought against, out of or in any way related to this lease. Upon notice from Landlord, Tenant shall defend any such claim, demand, cause of action or suit at Tenant's expense by counsel satisfactory to Landlord in its sole discretion. As a material part of the consideration to Landlord for this lease, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Demised Premises from any cause, and Tenant hereby waives all claims with respect thereto against landlord. Tenant shall give immediate notice to Landlord in case of casualty or accidents in the Demised Premises. The provisions of this Article 21 shall survive the expiration or sooner termination of this lease.

21.2 All personal property of Tenant, including goods, wares, merchandise, inventory, trade fixtures and other personal property of Tenant, shall be stored at the sole risk of Tenant. Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Industrial Complex or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other places resulting from dampness or any other cause whatsoever, or from the act or negligence of any other tenant or any officer, agent, employee, contractor or guest of any such tenant, except personal injury caused by or due to the gross negligence or willful misconduct of Landlord. Landlord or its agents shall not be liable for interference with the electrical service, ventilation, or for any latent defect in the Demised Premises.

21.3 The parties hereto acknowledge that all or a part of the Demised Premises may be used for the storage and shipment of goods not owned by Tenant, and Landlord is not willing to enter into this lease unless Tenant indemnifies the Indemnitees to Landlord's satisfaction from any liability on the part of the Indemnitees to the owner(s) of such goods for damage to the same arising out of any acts or omissions of the Indemnitees. As a material inducement to Landlord to enter into this lease, Tenant agrees to defend, indemnify and hold the Indemnitees harmless from and against any and all losses, claims, liabilities, obligations and damages imposed upon or incurred or asserted against the Indemnitees by reason of damage to goods of persons storing such goods with Tenant, notwithstanding the fact that such losses, claims, liabilities, obligations or damages may have been caused by the acts or omissions of Landlord. Tenant agrees that at all times during which it shall store goods not owned by it in the Demised Premises, it shall insure the indemnity described under this Section 21.3 in a manner reasonably satisfactory to Landlord. Landlord shall not be deemed a bailee, consignee, or warehouseman (or responsible for the standard of care incidental thereto) with respect to any goods stored or shipped to or from the Demised Premises for consignment or bailment and Tenant shall insert a cause to that effect in all warehouse receipts or consignment agreements for the storage or shipment of goods to or from the Demised Premises.

ARTICLE 22.
DEFAULT BY TENANT AND REMEDIES

22.1 The following events shall be deemed to be events of default by Tenant under this lease:

(a) Tenant shall fail to pay any installment of rental or any other obligation under this lease involving the payment of money and such failure shall continue for a period of five (5) days after written notice thereof to Tenant; provided, however, that for each calendar year during which Landlord has already given Tenant one (1) written notice of the failure to pay an installment of rental, no further notice shall be required (i.e., the event of default will automatically occur on the fifth (5^{th}) day after the day upon which the rental was due); and provided further that any such

notice shall be in lieu of, and not in addition to, any notice required under Section 1161, *et seq.* of the California Code of Civil Procedure.

(b) Tenant shall fail to comply with any provision of this lease, other than as described in Section 22.1(a) above, and either (i) shall not cure such failure within fifteen (15) days after written notice thereof to Tenant (or if the noncompliance cannot by its nature be cured within the 15-day period, if Tenant fails to commence to cure such noncompliance within the 15-day period and thereafter diligently prosecute such cure to completion), or (ii) shall cure that particular failure but shall again fail to comply with the same provision of this lease within three (3) months after Landlord's written notice; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161 *et seq* of the California Code of Civil Procedure.

(c) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease thereunder.

(e) A receiver or Trustee shall be appointed for the Demised Premises (expressly excluding a receiver appointed for the Industrial Complex or any portion thereof because of a default by Landlord in any of its obligations with respect to the Industrial Complex or any loan encumbering same) or for all or substantially all of the assets of Tenant or any guarantor of Tenants obligations under this lease.

(f) Tenant shall desert or vacate or shall commence to desert or vacate the Demised Premises or any substantial portion of the Demised Premises or at any time prior to the last month of the lease term shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial amount of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property.

(g) Tenant shall do or permit to be done anything which creates a lien upon the Demised Premises or upon all or any part of the Industrial Complex and Tenant shall have failed to release such lien of record by payment or by recording a proper bond by the date which is ten (10) days after written notice to Tenant of the imposition of such lien.

(h) Any transfer of a substantial portion of the assets of Tenant, or any incurrence of a material obligation by Tenant, unless such transfer or obligation is undertaken or incurred in the ordinary course of Tenant's business or in good faith for equivalent consideration, or with Landlord's consent.

(i) The default of any guarantors of Tenant's obligations hereunder under any guaranty of this lease, or the attempted repudiation or revocation of any such guaranty.

22.2 Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies to the extent permitted by law:

(a) Without any further notice or demand whatsoever, Tenant shall be obligated to reimburse Landlord for the damages suffered by Landlord as a result of the event of default, plus interest on such amount at the maximum contractual rate which could legally be charged in the event of a loan of such amount to Tenant (but in no event to exceed $1^{1}/_{2}$% per month); and Landlord may pursue a monetary recovery from Tenant.

(b) Without any further notice or demand whatsoever, Landlord may take any one or more of the actions permissible at law to insure performance by Tenant of Tenant's covenants and obligations under this lease. In this regard, and without limiting the generality of the immediately preceding sentence, it is agreed that if Tenant fails to open for business as required in this lease or, having opened for business, deserts or vacates the Demised Premises, Landlord may enter upon and take possession of such premises in order to protect them from deterioration and continue to demand from Tenant the monthly rentals and other charges provided in this lease, without any obligation to relet; however, if Landlord does, at its sole discretion, elect to relet the Demised Premises, such action by Landlord shall not be deemed an acceptance of Tenant's surrender of the Demised Premises unless Landlord expressly notifies Tenant of such acceptance in writing pursuant to this Section 22.2(b), Tenant hereby acknowledging that Landlord shall otherwise be reletting as Tenant's agent and Tenant furthermore hereby agreeing to pay to Landlord on demand any deficiency that may arise between the monthly rentals and other charges provided in this lease and that actually collected by Landlord. In the event that Landlord shall elect to relet, then rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness (other than rent) due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting (including brokerage commissions); third, to the payment of the cost of any alterations and repairs to the Demised Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should reletting, during any month to which such rent is applied, result in the actual payment of rentals at less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. Finally, it is agreed that in the event of any default described in Section 22.1(g) of this lease, Landlord may pay or bond around such lien, whether or not contested by Tenant; and in such event Tenant agrees to reimburse Landlord on demand for all costs and expenses incurred in connection with any such action, with Tenant further agreeing that Landlord shall in no event be liable for any damages or claims resulting from such action. No action or inaction by Landlord including, without limitation, the re-entry or taking of possession of the Demised Premises by Landlord pursuant to this Section 22.2(b) shall be construed as an election to terminate this lease or as interference with Tenant's rights of possession, assignment or subletting unless a written notice of such election shall be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord, Landlord may, at any time after such reletting, elect to terminate this lease for any such default.

(c) Landlord may terminate this lease by written notice to Tenant, in which event Tenant shall immediately surrender the Demised Premises to Landlord. In the event that Landlord shall elect to so terminate this lease, then Landlord may recover from Tenant:

(i) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves reasonably could have been avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves reasonably could be avoided; plus

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this lease or which in the ordinary course would be likely to result therefrom, plus

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the maximum rate permitted by law. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default Tenant hereby waives for Tenant and for all those claiming under Tenant all right now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Demised Premises after any termination of this lease.

(d) In addition to all other rights and remedies provided Landlord in this lease and by law, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover rent as it becomes due if Tenant has the right to sublet or assign the lease, subject to reasonable limitations).

22.3 It is expressly agreed that in determining "the unpaid rent" as that term is used throughout Sections 2.22(c)(i) and 22.2(c)(ii) above, there shall be added to the minimum guaranteed rental (as specified in Section 1.1(l) of this lease) a sum equal to the charges for maintenance of the Common Area (as specified in Section 7.4 of this lease), and the payments for taxes, charges and insurance (as specified in Article 6 of this Lease).

22.4 It is further agreed that, in addition to payments required pursuant to Sections 22.2(b) and 22.2(c) above, Tenant shall compensate Landlord for all expenses incurred by Landlord in repossession (including, among other expenses, any increase in insurance premiums caused by the vacancy of the Demised Premises), all expenses incurred by Landlord in reletting (including, among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees), all concessions granted to a new tenant upon reletting (including, among other concessions, renewal options), all losses incurred by Landlord as a direct or indirect result of Tenant's default (including, among other losses, any adverse reaction by Landlord's mortgagee or by other tenants or potential tenants of the Industrial Complex) and a reasonable allowance for Landlord's administrative efforts, salaries and overhead attributable directly or indirectly to Tenant's default and Landlord's pursuing the rights and remedies provided herein and under applicable law.

22.5 Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative and not exclusive of each other.

22.6 If on account of any breach or default by Tenant in its obligations hereunder, Landlord shall employ an attorney to present, enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay any reasonable attorneys' fees incurred by Landlord in such connection.

22.7 Intentionally deleted.

22.8 In the event of any default described in Section 22.1(d) of this lease, any assumption and assignment must conform with the requirements of the Bankruptcy Code and, in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Tenant must fulfill the following

obligations, in addition to any other reasonable obligations that Landlord may require, before any assumption of this lease is effective: (i) all defaults under Section 22.1(a) of this lease must be cured within ten (10) days after the date of assumption; (ii) all other defaults under Section 22.1 of this lease other than under Section 22.1(d) must be cured within fifteen (15) days after the date of assumption; (iii) all actual monetary losses incurred by Landlord (including, but not limited to, reasonable attorneys' fees) must be paid to Landlord within ten (10) days after the date of assumption; and (iv) Landlord must receive within ten (10) days after the date of assumption a security deposit in the amount of six (6) months minimum guaranteed rent (using the minimum guaranteed rent in effect for the first full month immediately following the assumption) and an advance prepayment of minimum guaranteed rent in the amount of three (3) months minimum guaranteed rent (using the minimum guaranteed rent in effect for the first full month immediately following the assumption), both sums to be held by Landlord in accordance with Section 22.7 above and deemed to be rent under this lease for the purposes of the Bankruptcy Code as amended and from time to time in effect.

(a) In the event this lease is assumed in accordance with the requirements of the Bankruptcy Code and this lease, and is subsequently assigned, then, in addition to any other reasonable obligations that Landlord may require and in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Landlord shall be provided with (i) a financial statement of the proposed assignee prepared in accordance with generally accepted accounting principles consistently applied, though on a cash basis, which reveals a net worth in an amount sufficient, in Landlord's reasonable judgment, to assure the future performance by the proposed assignee of Tenant's obligations under this lease; or (ii) a written guaranty by one or more guarantors with financial ability sufficient to assure the future performance of Tenant's obligations under this lease, such guaranty to be in form and content satisfactory to Landlord and to cover the performance of all of Tenant's obligations under this lease.

ARTICLE 23.
INTENTIONALLY DELETED

ARTICLE 24.
HOLDING OVER

24.1 In the event Tenant remains in possession of the Demised Premises after the expiration of this lease and without the execution of a new lease or an amendment hereto, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the rental herein provided plus one hundred percent (100%) of such amount and otherwise subject to all the conditions, provisions and obligations of this lease insofar as the same are applicable to a month-to-month tenancy. Notwithstanding the foregoing, so tong as Landlord does not have a letter of intent under negotiation (or executed) for some or all of the Demised Premises with a bona fide third party replacement tenant which desires occupancy or access to make tenant improvements during the holdover period, Tenant's holdover rent for the first month following the term expiration date shall be set at a rental equal to the rental herein provided plus fifty percent (50%) of such amount, and Tenant's holdover rent for the second month following the term expiration date shall be set at a rental equal to the rental herein provided plus seventy-five percent (75%) of such amount, in each case subject to all the conditions, provisions and obligations of this lease insofar as the same are applicable to a month-to-month tenancy. Neither any provision hereof nor acceptance by Landlord of rent after such expiration or earlier termination shall be deemed a consent to a holdover hereunder or result in a renewal of this lease or an extension of the term. Notwithstanding any provision to the contrary contained herein, (i) Landlord expressly reserves the right to require Tenant to surrender possession of the Demised Premises upon the expiration of the term of this lease or upon the earlier termination hereof, the right to reenter the Demised Premises, and the right to assert any remedy at law or in equity to evict Tenant and collect

damages in connection with any such holding over, and (ii) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Demised Premises on the expiration or earlier termination of this lease in accordance with the provisions of this lease.

ARTICLE 25.
NOTICES

25.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above (or at Landlord's option, to Tenant at the Demised Premises), or at such other addresses as they have theretofore specified by written notice.

25.2 If and when included within the term "Landlord" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Landlord; if and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notice and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment. In addition, Tenant agrees that actions by Landlord and notices to Tenant hereunder may be taken or given by Agent, Landlord's attorney, or any other property manager or agent.

25.3 A copy of any notice or document required or permitted to be delivered hereunder to Landlord shall simultaneously be delivered to Agent.

ARTICLE 26.
COMMISSIONS

26.1 Tenant and Landlord warrant that they have had no dealings with any broker or agent in connection with this lease, other than Agent and Tenant's Broker, whose commissions shall be paid by Landlord. Landlord and Tenant covenant to pay, hold harmless and indemnify each other from and against any and all cost, expense or liability for any compensation, commissions or charges claimed by any other broker or agent utilized by the indemnitor with respect to this lease or the negotiation hereof:

ARTICLE 27.
REGULATIONS

27.1 Landlord and Tenant acknowledge that there are now in effect and may hereafter be enacted or go into effect federal, state, county and municipal laws, orders, rules, directives and regulations relating to or affecting the Demised Premises or the Industrial Complex, concerning the impact on the environment of construction, land use, maintenance and operation of structures, toxic or otherwise hazardous substances, and the conduct of business, including, without limitation, the Americans With Disabilities Act of 1990 and the Clean Air Act and regulations issued thereunder (all of the foregoing, as amended from time to time, being herein called the "Regulations"). Tenant will not cause or permit to be caused, any act or practice, by negligence, omission or otherwise, that would adversely affect the

environment or do anything or permit anything to be done that would violate any of said Regulations. Moreover, Tenant shall have no claim against Landlord by reason of any changes Landlord may make in the Industrial Complex or the Demised Premises pursuant to said Regulations or any charges imposed upon Tenant, Tenant's customers or other invitees pursuant to same. As a material part of the consideration to Landlord for this lease, Tenant acknowledges that Landlord shall have no liability to Tenant to the extent Landlord, acting in good faith, complies with any governmental law, regulation or order, including without limitation the USA Patriot's Act (also known as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001").

27.2 If, by reason of any Regulations, the payment to, or collection by, Landlord of any rental or other charge (collectively referred to hereinafter as "Lease Payments") payable by Tenant to Landlord pursuant to the provisions of this lease is in excess of the amount (the "Maximum Charge") permitted by the Regulations, then Tenant, during the period (the "Freeze Period") when the Regulations shall be in force and effect shall not be required to pay, nor shall Landlord be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring the Regulations to be invalid or not applicable to the provisions of this lease, Tenant, to the extent not then prescribed by law, and commencing with the first day of the month immediately following, shall pay to Landlord as additional rental, in equal monthly installments during the balance of the term of this lease, a sum equal to the cumulative difference between the Maximum Charges and the Lease Payments during the Freeze Period. If any provisions of this Section, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to affect any of the other provisions of this Section or of this lease, all of which shall be deemed valid and enforceable to the fullest extent permitted by law.

27.3 Tenant acknowledges that it will be wholly responsible for any accommodations or alterations which need to be made to the Demised Premises to accommodate disabled employees and customers of Tenant, including without limitation, the requirements under the Americans With Disabilities Act of 1990 and any equivalent California law. Any alterations made to the Demised Premises in order to comply with either statute must be made solely at Tenant's expense and in compliance with any terms and requirements of this lease. Landlord agrees to make reasonable efforts to ensure that the Common Area is in compliance with the applicable disability access laws as of the date hereof. If a complaint is received by Landlord from either a private or government source regarding disability access to the Common Area of the Industrial Complex, Landlord reserves the right to mediate, contest, comply with or otherwise respond to such complaint as Landlord deems to be reasonably prudent under the circumstances. If Landlord decides to make alterations to the Common Area of the Industrial Complex in response to any such complaints or in response to legal requirements Landlord considers to be applicable to the Common Area of the Industrial Complex, the cost of such alterations shall be included in the Common Area maintenance charge under this lease. Landlord and Tenant agree that so long as the governmental entity or entities charged with enforcing such statutes have not expressly required Landlord to take specific action to effectuate compliance with such statutes, Landlord shall be conclusively deemed to be in compliance with such statutes. Tenant agrees to provide Landlord with written notice should Tenant become aware of a violation of such statutes with respect to the Common Area. In the event Landlord is required to take action to effectuate compliance with such statutes, Landlord shall have a reasonable period of time to make the improvements and alterations necessary to effectuate such compliance, which period of time shall be extended by any time necessary to cause any necessary improvements and alterations to be made.

ARTICLE 28.
HAZARDOUS MATERIALS

28.1 During the term of this lease, Tenant shall comply with all Environmental Laws and Environmental Permits (each as defined in Section 28.7 hereof) applicable to the operation or use of the Demised Premises, will cause all other persons occupying or using the Demised Premises to comply with all such Environmental Laws and Environmental Permits, will immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, and will obtain and renew all Environmental Permits required for the operation or use of the Demised Premises.

28.2 Tenant shall not generate, use, treat, store, handle, release or dispose of, or permit the generation, use, treatment, storage, handling, release or disposal of Hazardous Materials (as defined in Section 28.7 hereof) on the Demised Premises, or the Industrial Complex, or transport or permit the transportation of Hazardous Materials to or from the Demised Premises or the Industrial Complex except for limited quantities used or stored at the Demised Premises and required in connection with the routine operation and maintenance of the Demised Premises, and then only upon the written consent of Landlord and in compliance with all applicable Environmental Laws and Environmental Permits.

28.3 At any time and from time to time during the term of this lease, Landlord may perform an environmental site assessment report concerning the Demised Premises, prepared by an environmental consulting firm chosen by Landlord, indicating the presence or absence of Hazardous Materials caused or permitted by Tenant and the potential cost of any compliance, removal or remedial action in connection with any such Hazardous Materials on the Demised Premises. Tenant shall grant and hereby grants to Landlord and its agents access to the Demised Premises and specifically grants Landlord an irrevocable non-exclusive license to undertake such an assessment. The cost of any such environmental site assessment shall be borne by Landlord unless (i) Landlord initiates same based on Landlord's reasonable belief that Tenant has caused or permitted a Hazardous Materials problem on or at the Demised Premises, (ii) the results of such assessment indicate that Tenant has caused or permitted a

Hazardous Materials problem on or at the Demised Premises, or (iii) such assessment is initiated by Landlord incident to the occurrence of an event of default by Tenant under this Article 28. If Tenant shall be held responsible for the costs of the assessment as above described, Tenant shall promptly pay Landlord for the reasonable costs of such assessment on demand.

28.4 Tenant will immediately advise Landlord in writing of any of the following: (1) any pending or threatened Environmental Claim (as defined in Section 28.7 hereof) against Tenant relating to the Demised Premises or the Industrial Complex; (2) any condition or occurrence on the Demised Premises or the Industrial Complex that (a) results in noncompliance by Tenant with any applicable Environmental Law, or (b) could reasonably be anticipated to form the basis of an Environmental Claim against Tenant or Landlord or the Demised Premises; (3) any condition or occurrence on the Demised Premises or any property adjoining the Demised Premises that could reasonably be anticipated to cause the Demised Premises to be subject to any restrictions on the ownership, occupancy, use or transferability of the Demised Premises under any Environmental Law; and (4) the actual or anticipated taking of any removal or remedial action by Tenant in response to the actual or alleged presence of any Hazardous Material on the Demised Premises or the Industrial Complex. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and Tenant's response thereto. In addition, Tenant will provide Landlord with copies of all communications regarding the Demised Premises with any government or governmental agency relating to Environmental Laws, all such communications with any person relating to Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Landlord.

28.5 Tenant will not change or permit to be changed the present use of the Demised Premises unless Tenant shall have notified Landlord thereof in writing and Landlord shall have determined, in its sole and absolute discretion, that such change will not result in the presence of Hazardous Materials on the Demised Premises except for those described in Section 28.2 above.

28.6 Tenant agrees to defend, indemnify and hold harmless the Indemnitees (as defined in Section 21.1) from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials on the Industrial Complex which is caused or permitted by Tenant and (b) any Environmental Claim relating in any way to Tenant's operation or use of the Demised Premises (the "Hazardous Materials Indemnified Matters"). The provisions of this Article 28 shall survive the expiration or sooner termination of this lease.

(a) To the extent that the undertaking in the preceding paragraph may be unenforceable because it is violative of any law or public policy, Tenant will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Hazardous Materials Indemnified Matters incurred by the Indemnitees.

(b) All sums paid and costs incurred by Landlord with respect to any Hazardous Materials Indemnified Matter shall bear interest at the lesser of (i) eighteen (18%) percent per annum, or (ii) the maximum legal rate of interest allowed in the State of California, from the date so paid or incurred until reimbursed by Tenant, and all such sums and costs shall be immediately due and payable on demand.

28.7 (a) "Hazardous Materials" means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous

wastes," "toxic substances, "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure to which is regulated by any governmental authority; (b) "Environmental Law" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; the Atomic Energy Act, 42 U.S.C. §§ 2011 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; (c) "Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment; and (d) "Environmental Permits" means all permits, approvals, identification numbers, licenses and other authorizations required under any applicable Environmental Law.

28.8 In no event shall Tenant be liable for any costs, losses or claims due to the presence of Hazardous Materials in the Demised Premises (i) if such Hazardous Materials were present in the Demised Premises prior to Tenant's occupancy of the Demised Premises (other than as a result of Tenants acts or omissions), or (ii) if such Hazardous Materials were present in the Demised Premises solely as the result of Landlord's acts or omissions.

ARTICLE 29.
MISCELLANEOUS

29.1 Nothing in this lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

29.2 Tenant shall not for any reason withhold or reduce Tenant's required payments of rentals and other charges provided in this lease, it being agreed that the obligations of Landlord under this tease are independent of Tenants obligations except as may be otherwise expressly provided. The immediately preceding sentence shall not be deemed to deny Tenant the ability of pursuing all rights granted it under this lease or at law; however, at the direction of Landlord, Tenant's claims in this regard shall be litigated in proceedings different from any litigation involving rental claims or other claims by Landlord against Tenant (i.e., each party may proceed to a separate judgment without consideration, counterclaim or offset as to the claims asserted by the other party).

29.3 The liability of Landlord, any agent of Landlord, or any of their respective officers, directors, shareholders, or employees to Tenant for or in respect of any default by Landlord under the terms of this lease or in respect of any other claim or cause of action shall be limited to the interest of Landlord in the Industrial Complex, and Tenant agrees to look solely to Landlord's interest in the Industrial

Complex for the recovery and satisfaction of any judgment against Landlord, any agent of Landlord, or any of their respective officers, directors, shareholders, and employees.

29.4 In all circumstances under this lease where the prior consent of one party (the "consenting party"), whether it be Landlord or Tenant, is required before the other party (the "requesting party") is authorized to take any particular type of action, such consent shall not be withheld in a wholly unreasonable and arbitrary manner; however, the requesting party agrees that its exclusive remedy if it believes that consent has been withheld improperly (including, but not limited to, consent required from Landlord pursuant to Section 19.1) shall be to institute litigation either for a declaratory judgment or for a mandatory injunction requiring that such consent be given (with the requesting party hereby waiving any claim for damages, attorneys' fees or any other remedy unless the consenting party refuses to comply with a court order or judgment requiring it to grant its consent).

29.5 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party, except for the payment of rent due hereunder.

29.6 If any provision of this lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this lease shall not be affected thereby.

29.7 Intentionally deleted.

29.8 The laws of the State of California shall govern the interpretation, validity, performance and enforcement of this lease. Venue for any action under this lease shall be the county in which rentals are due pursuant to Section 4.2 and Section 1.1 of this lease.

29.9 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

29.10 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

29.11 All covenants and obligations contained within this lease shall bind and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, and its permitted successors and assigns.

29.12 This lease contains the entire agreement between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this lease. No brochure, rendering, information or correspondence shall be deemed to be a part of this agreement unless specifically incorporated herein by reference. In addition, no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

29.13 LANDLORD AND TENANT HEREBY ACKNOWLEDGE THAT THEY ARE NOT RELYING UPON ANY BROCHURE, RENDERING, INFORMATION, REPRESENTATION OR PROMISE OF THE OTHER, OR OF THE AGENT, EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS LEASE.

29.14 No waiver of any of the terms, covenants, provisions, conditions, rules and regulations imposed by this lease, and no waiver of any legal or equitable relief or remedy, shall be implied by the failure of Landlord to assert any rights, declare any forfeiture, or for any other reason. No waiver of any of the terms, provisions, covenants, conditions, rules and regulations shall be valid unless it shall be in writing signed by Landlord. No waiver by Landlord or forgiveness of performance by Landlord for one or more tenants shall constitute a waiver or forgiveness of performance in respect to Tenant.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this lease shall be deemed an acceptance of a surrender of the Demised Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of this lease or a surrender of the Demised Premises. The acceptance of any rent by Landlord following a breach of this lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.

29.15 Tenant shall deliver and surrender to Landlord possession of the Demised Premises (including all of Tenant's permanent work upon and to the Demised Premises, all replacements and all fixtures permanently attached to the Demised Premises) immediately upon the expiration of the term or the termination of this lease in as good condition and repair as the same were on the delivery date (loss by any insured casualty and ordinary wear and tear only excepted) and deliver the keys at the office of Landlord or Landlord's agent; provided, however, that upon Landlord's request made at least thirty (30) days prior to the end of the term, or the date Tenant is otherwise required to vacate the Demised Premises, Tenant shall remove all fixtures and equipment affixed to the Demised Premises by Tenant, and repair and restore the Demised Premises to their condition on the delivery date (loss by any insured casualty and ordinary wear and tear only excepted), at Tenant's sole expense, subject to the last sentence of Section 11.1 above. The removal shall be performed prior to the earlier of the end of the term or the date Tenant is required to vacate the Demised Premises.

29.16 Tenant shall not record this lease. Without the prior written consent of Landlord, Tenant shall not record any memorandum of this lease, short form or other reference to this lease.

29.17 The submission of this lease for examination does not constitute a reservation of or option for the Demised Premises or any other space in the Industrial Complex, and shall not vest any right in Tenant. This lease shall become effective as a lease only upon its execution and delivery by the parties.

29.18 LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THE DEMISED PREMISES (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS LEASE OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS LEASE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LANDLORD TO ENTER INTO AND ACCEPT THIS LEASE.

29.19 If Tenant is a corporation (including any form of professional association), then each individual executing or attesting this lease on behalf of such corporation covenants, warrants and represents that he or she is duly authorized to execute or attest and deliver this lease on behalf of such corporation. If Tenant is a partnership (general or limited) or limited liability company, then each individual executing this lease on behalf of the partnership or company hereby covenants, warrants and represents that he or she is duly authorized to execute and deliver this lease on behalf of the partnership or company in accordance with the partnership agreement or membership agreement, as the case may be, or an amendment thereto, now in effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

29.20 This lease consists of twenty-nine Articles and Exhibits "A" through "E". With the exception of Article 7, in the event any provision of an exhibit shall be inconsistent with a provision in the body of the lease, the provision as set forth in the exhibit shall be deemed to control.

EXECUTED as of the latest date accompanying a signature by Landlord or Tenant below.

LANDLORD:

MP CARIBBEAN, INC.
a Delaware corporation

By: /s/ THOMAS KLUGHER

Name: Thomas Klugher

Title: Vice President

Date of Signature: 7/14/03

TENANT:

ACCURAY INCORPORATED,
a California corporation

By: /s/ Chris A. Raanes

Name: Chris A. Raanes

Title: COO

By: /s/ John M. Harland

Name: John M. Harland

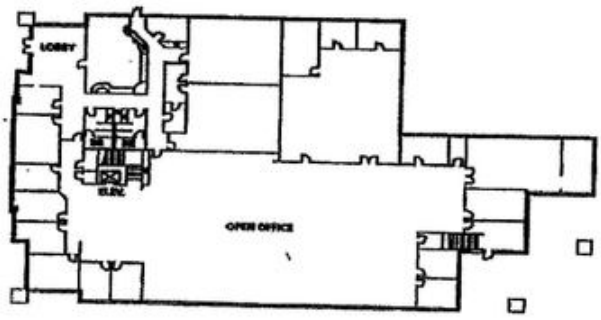
Title: CFO and Ass't Secretary

Date of Signature: 11 July, 2003

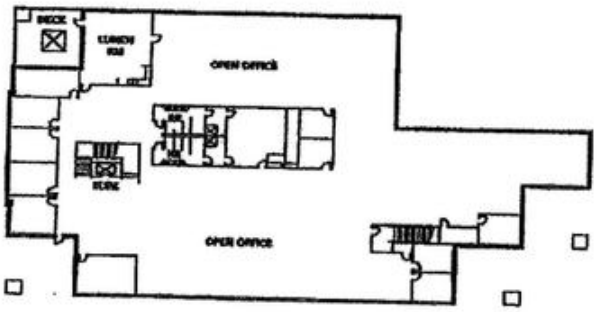
EXHIBIT "A"

DEMISED PREMISES

First Floor



Second Floor



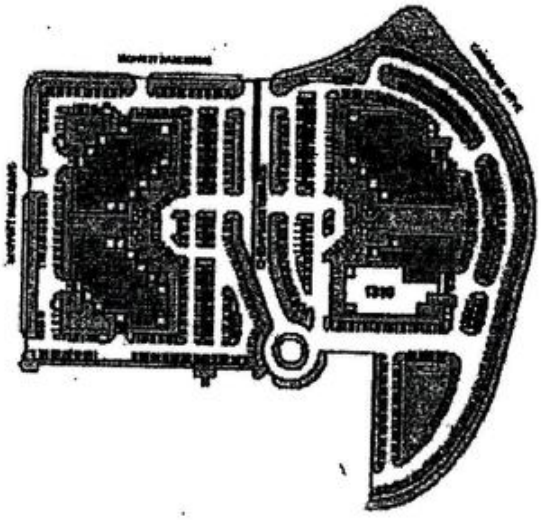


EXHIBIT "B"

CONSTRUCTION; TENANT ACCEPTANCE OF SPACE "AS IS"

ARTICLE I. *GENERAL*

Tenant hereby accepts the Demised Premises "as is" and "ready for occupancy." Subject to Article IV below, Landlord shall have no obligation to perform any tenant improvements in the Demised Premises or to fund any such improvements. Prior to any modification of the Demised Premises by or on behalf of Tenant, Tenant shall adhere to the following as well as the provisions contained in Article 11 of the lease:

ARTICLE II. *PRE-CONSTRUCTION OBLIGATIONS*

A. Complete plans, diagrams, schedules and other data relating to work to be performed by Tenant in the Demised Premises must be furnished by Tenant to Landlord in form sufficient to obtain a building permit. Without limiting the generality of the immediately preceding sentence, Tenant's submissions must include a floor plan, a reflected ceiling plan, a plumbing plan, elevations of walls and a fixture plan. All drawings shall be at scale of either $^{1}/_{8}$" or $^{1}/_{4}$".

B. Tenant shall secure Landlord's written approval of all designs, plans, specifications, materials, contractors and contracts for work to be performed by Tenant before beginning the work (including following whatever "work letter" instructions, if any, which Landlord may deliver to Tenant in connection with the work), and shall secure all necessary licenses and permits to be used in performing the work. Tenant's finished work shall be subject to Landlord's approval and acceptance.

C. The insurance requirements under Article 15 of this lease and the indemnity requirements under Article 16 of this lease shall expressly apply during the construction contemplated in this exhibit, and Tenant shall provide evidence of appropriate insurance coverage prior to beginning any of Tenant's work. Tenant shall provide Landlord with evidence of insurance covering both Tenant and Tenant's contractor against damage to their personal property, as well as against third-party liability and workers' compensation claims arising out of all construction and associated activities. All policies of insurance shall be subject to Landlord's prior approval and shall be endorsed showing Landlord as an additional named insured (or if permitted by Landlord, may provide a waiver of subrogation against Landlord).

ARTICLE III. *DESCRIPTION OF TENANT'S WORK*

A. Signs: Tenant shall pay for all signs and the installation thereof, including the electrical hook-up, subject to the provisions of Section 13.1 of this lease.

B. Utilities: All meters or other measuring devices in connection with utility services shall be provided by Tenant. All service deposits shall be made by Tenant at Tenant's expense.

C. All work undertaken by Tenant shall be at Tenant's expense and shall not damage the Building or any part thereof. Any roof penetration shall be performed by Landlord's roofer or, at Landlord's option, by a bonded roofer approved in advance by Landlord. The work shall be begun only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plans, to include materials acceptable to Landlord, in order to prevent injury to the roof and to spread the weight of the equipment being installed. Tenant shall also be responsible for obtaining and paying for professional inspections of any structural work (including, without limitation, any roof work or concrete work).

D. All work performed by or at the behest of Tenant shall be in compliance with all applicable Regulations.

E. Any code-required upgrades to the Demised Premises required as a result of Tenant's work performed under the terms of this ***Exhibit "B"*** or under the terms of Article 11 of the lease shall be at Tenant's sole cost and expense, and shall not be deemed warranted by Landlord.

F. Subject to Landlord's prior approval of the exact location, not to be unreasonably withheld, and subject to applicable law, Tenant, at its own expense, shall be authorized to identify up to twenty (20) parking spaces near the entrance to the Demised Premises as "visitor parking" spots and may stencil the curbs accordingly. Up to four (4) of said twenty (20) spots closest to the front door of the Demised Premises may be stenciled as "Accuray Visitor Parking" spots. Landlord shall have no obligation to police or monitor compliance with same by visitors to the Industrial Complex or other tenants thereof. Landlord hereby approves the twenty (20) parking spaces designated on the attached ***Exhibit "B-1"***.

ARTICLE IV. *TENANT IMPROVEMENT ALLOWANCE*

A. Tenant shall be entitled to a tenant improvement allowance (the "Tenant Improvement Allowance") in the maximum amount of Three Hundred Thousand and No/100 Dollars ($300,000.00) for the costs relating to the initial design and construction of Tenant's improvements which are permanently affixed to the Demised Premises (the "Tenant Improvements"). In no event shall Landlord be obligated to make disbursements for Tenant Improvements in a total amount which exceeds the Tenant Improvement Allowance. Notwithstanding the foregoing, no portion of the Tenant Improvement Allowance may be applied to Tenant Improvements made to any portion of the Demised Premises which is then the subject of a sublease, or Tenant Improvements made to prepare any portion of the Demised Premises for a proposed or anticipated subtenant or assignee, or for material or supplies not located on the Demised Premises. The Tenant Improvement Allowance may, however, be used for (i) the purchase and installation of Tenants onsite telephone system and cabling, (ii) furnishings for the Demised Premises, and (iii) Tenant's relocation costs.

B. Landlord shall reimburse Tenant for costs and expenses actually incurred by Tenant for work actually performed, construction in place and/or materials delivered to the Demised Premises in connection with the design and construction of the Tenant Improvements (as described in Paragraph IV.A above) upon receipt (not more frequently than monthly) of (i) a written request from Tenant for reimbursement, (ii) invoices of Tenant's contractor, subcontractors or suppliers, as applicable, with evidence of payment thereof, (iii) conditional lien waivers executed by Tenant's contractor, subcontractors or suppliers, as applicable, for their portion of the work covered by the reimbursement request, (iv) in the case of final payment, unconditional lien waivers and mechanic's lien releases executed by Tenant's contractor, subcontractors or suppliers, as applicable (all such waivers and releases to be in the form prescribed by California Civil Code Section 3262), and (v) all other information and documentation reasonably requested by Landlord. Landlord may withhold the amount of any and all retentions provided for in the original contracts or subcontracts until expiration of the applicable lien periods or Landlord's receipt of unconditional lien waivers and mechanic's lien releases executed by Tenant's contractor, subcontractors or suppliers, as applicable.

C. Under no circumstances shall Landlord be required to fund any portion of the Tenant Improvement Allowance when Tenant is in default under this lease.

D. In the event any portion of the Tenant Improvement Allowance has not been funded as a reimbursement by that date which is one hundred eighty (180) days after the Commencement Date of this lease, such amount shall no longer be available for the payment of expenses in connection with the Tenant Improvements and shall be forfeited

EXHIBIT "B-1"

DIAGRAM OF VISITOR PARKING SPACES

[See Attached]

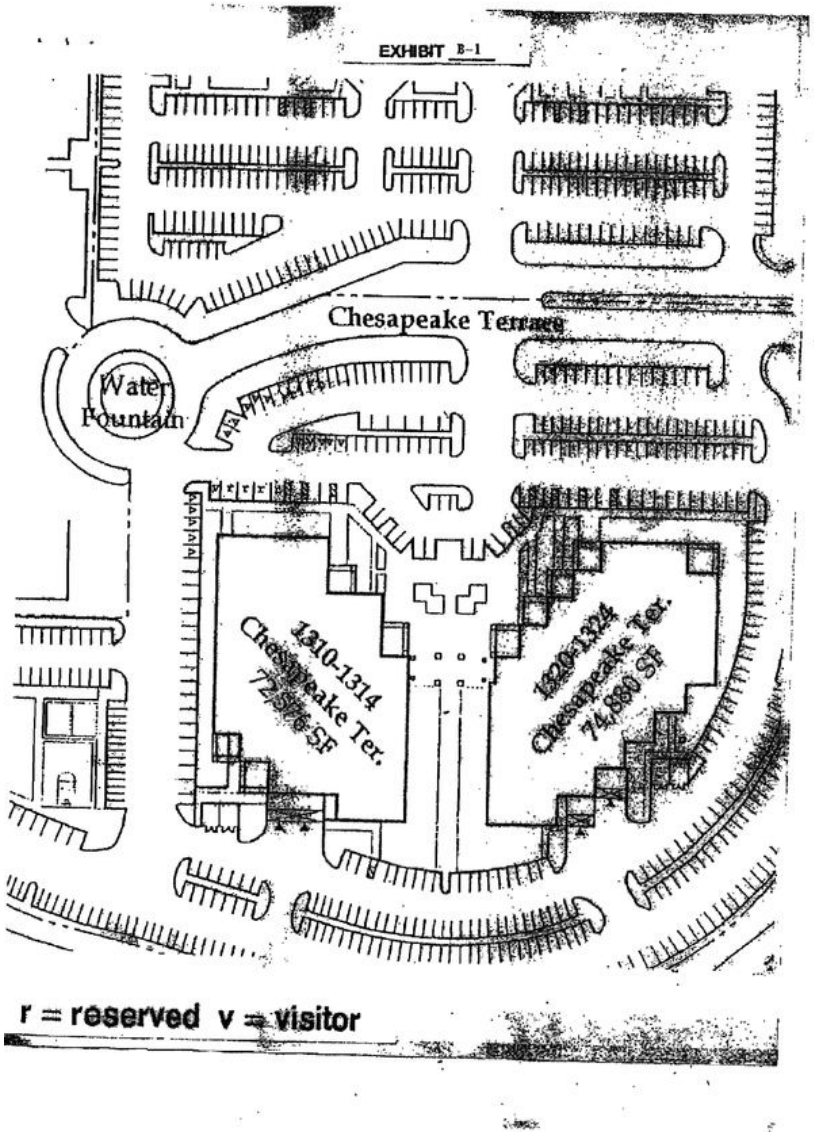


EXHIBIT "C"

TENANT CONSTRUCTION RULES AND REGULATIONS

1. All demolition, removals and other categories of work that may inconvenience other tenants or disturb building operations must be scheduled and performed before or after normal working hours, and the property manager for the Industrial Complex (the "Property Manager") shall be provided with at least twenty-four (24) hours notice prior to proceeding with such work.

2. All structural and floor loading requirements shall be subject to the prior approval of the Industrial Complex's structural engineer. Approval shall be obtained by Tenant and any fees shall be at Tenant's sole expense.

3. All mechanical (HVAC, plumbing and sprinkler) and electrical requirements shall be subject to the prior approval of Landlord's mechanical and electrical engineers. When necessary, Property Manager will require engineering and shop drawings, which drawings must be approved by Property Manager before the work is started. Drawings shall be prepared by Tenant and all approvals shall be obtained by Tenant.

4. If the shutdown of risers and mains for electrical, HVAC, sprinkler and/or plumbing work is required, such work shall be supervised by a representative of Landlord at Tenant's sole expense at a time approved in advance by Property Manager.

5. Tenant's general contractor is responsible to do all of the following:

(a) Properly supervise construction at the Demised Premises at all times.

(b) Police the work at all times, continually keeping the affected space(s) safe and orderly.

(c) Maintain the cleanliness and protection of all affected areas.

(d) Avoid and prevent the disturbance of other tenants.

6. If Tenant's general contractor is negligent in any of its responsibilities, Tenant shall be charged for the corrective work done by Landlord's personnel.

7. No electrical cords are to be stretched across any walkways or public areas in any manner that would cause any safety hazard.

8. Radios may not be played if the sound can be heard in the Common Area or in other tenant suites.

9. Electrical rooms may not be used to store any materials, fixtures, etc.

10. All sprinkler shut downs, draining or filling shall be scheduled and coordinated with the Landlord's chief engineer or his delegate.

11. Bracing, soldering or welding shall be scheduled in advance with Property Manager.

12. Dust shall be kept at a minimum to avoid smoke detector activation.

13. If requested by Tenant, Property Manager shall provide space in the parking lot at a location to be determined by Landlord for a trash and debris bin during construction of the tenant improvements.

14. Damage to any pre-installed fixtures (e.g., water fountains, sinks, lights, commodes, signage, etc.) shall be repaired at Tenant's sole expense.

15. Tenant's general contractor shall coordinate the keying schedule, Tenant's key requirements and cylinder installation with Landlord's designated locksmith.

16. Where appropriate, Tenant shall submit to Property Manager a final "as-built' set of drawings showing all items of work in full detail. "As-built" shall be sepias, vellums, mylars or on Autocad.

17. Throughout the construction period and upon conclusion of the work, Tenant's general contractor shall cause the work areas and all other affected areas to be clean and free of debris.

EXHIBIT "D"

RIGHT OF FIRST OPPORTUNITY

On condition that Tenant has fully complied with all the terms and conditions of this lease and is not then in default under any of the terms and conditions of the lease beyond any applicable notice and cure period, Tenant shall have a one-time right of first opportunity to negotiate a lease amendment to expand the Demised Premises to incorporate the entirety of the adjacent 32,576 square foot space in the Building commonly known as 1314 Chesapeake Terrace (the "Adjacent Space") when Landlord notifies Tenant ("Landlord's Notice") that Landlord is ready to enter into lease negotiations for such space with a third party.

(a) When Landlord is about to enter into such lease negotiations, Landlord shall deliver Landlord's Notice of Tenant's opportunity to negotiate, and shall identify in Landlord's Notice the minimum guaranteed rental for the Adjacent Space. The annual minimum guaranteed rental payable by Tenant for the Adjacent Space for the remainder of the term shall be set at the then fair market rental value for the Adjacent Space as determined by Landlord in its sole good faith discretion. The lease term for the Adjacent Space shall be coterminous with the term for the Demised Premises and shall commence upon delivery.

(b) Tenant shall have (5) days from receipt of Landlord's Notice in which to notify Landlord in writing of Tenant's decision and/or to negotiate an alternative minimum guaranteed rental amount. If Tenant accepts Landlord's proposal, or if the parties mutually agree within said five (5) day period to an alternative proposal, then Landlord and Tenant shall, within ten (10) days, execute an amendment to this lease incorporating the Adjacent Space into the Demised Premises, setting forth Tenant's minimum guaranteed rental and new proportionate shares, and any other adjustments to the lease negotiated by the parties (or logically necessitated by the addition of the Adjacent Space). If Tenant declines Landlord's proposal (or otherwise does not reach agreement with Landlord regarding terms for the expansion), or if Tenant does not timely respond to Landlord's proposal, Landlord shall then be free to lease the Adjacent Space to any third party or parties on such terms as Landlord may elect in its sole and absolute discretion, without any further liability to Tenant whatsoever with respect to the Adjacent Space.

(c) If the Demised Premises are expanded as hereinabove provided, the Adjacent Space shall be delivered to Tenant in its "AS IS" condition (without requirement for any tenant improvement allowance, unless same shall be agreed upon by the parties). Tenant shall have the option of performing tenant improvements in the Adjacent Space subject to all of the terms and provisions of the lease.

(d) Notwithstanding anything to the contrary set forth herein, this right of first opportunity shall not be available to any assignee or subtenant of Tenant who becomes the "Tenant" hereunder.

EXHIBIT "E"

RENEWAL OPTION

Tenant shall have the right to renew the term of this lease for one (1) four (4)-year term upon prior written notice ("Tenant's Election Notice") to Landlord given not sooner than fifteen (15) months nor later than nine (9) months prior to the term expiration date; provided that at the time Tenant gives such notice to Landlord and for the remainder of the initial term of this lease (i) this lease has not been assigned and Tenant continues to occupy at least ninety percent (90%) of the rentable square footage of the Demised Premises and (ii) Tenant is not in default hereunder. During the renewal term, the provisions of this lease, as it may be amended in writing prior to the date of the commencement of such renewal term, shall continue in effect except that Tenant shall occupy the Demised Premises in its then "AS IS" condition and there shall be no abatement of rent, nor shall there be credit or allowances given to Tenant for improvements to the Demised Premises, and the minimum guaranteed rental will be an amount equal to whatever monthly rental (plus whatever periodic adjustments) Landlord is then quoting to prospective tenants for new leases of comparable space in the Industrial Complex for a comparable term (as confirmed by written statement delivered to Tenant by a representative of Landlord within fifteen (15) days of delivery of Tenant's Election Notice), or if no comparable space exists in the Industrial Complex, then one hundred percent (100%) of the projected prevailing market rate of rent for comparable space with comparable finish-out in comparable industrial buildings in comparable locations, as of the term expiration date (as confirmed by written statement delivered to Tenant by a representative of Landlord within fifteen (15) days of delivery of Tenant's Election Notice); provided, however, that in no event shall the minimum guaranteed rental rate during such renewal term be less than the fully escalated minimum guaranteed rental rate being paid by Tenant during the last full calendar month of the initial lease term. It is understood and agreed that Tenant's submittal of Tenant's Election Notice shall bind Tenant to a four (4)-year extension of this lease.

If by the date forty-five (45) days following delivery of Tenant's Election Notice, Landlord and Tenant have not agreed in writing as to the amount of the minimum guaranteed rental for the renewal term, the parties shall determine the projected prevailing market rental rate in accordance with the following procedure. Landlord and Tenant shall each appoint one real estate appraiser, and the two so appointed shall select a third. Said real estate appraisers shall each be licensed in the State of California, specializing in the field of commercial real estate in the City of Sunnyvale, California, having no less than ten (10) years experience in such field, unaffiliated with either Landlord or Tenant, and recognized as ethical and reputable within their field. Landlord and Tenant agree to make their appointments promptly within ten (10) days after expiration of the forty-five (45) day negotiation period, or sooner if mutually agreed upon. The two appraisers selected by Landlord and Tenant shall promptly select a third appraiser within thirty (30) days after they both have been appointed, and each appraiser, within forty-five (45) days after the third appraiser is selected, shall submit his or her determination of the then projected prevailing market rate of rent for comparable space with comparable finish-out in comparable industrial buildings in comparable locations. The prevailing market rental rate shall be the mean of the two closest rental determinations.

Once the minimum guaranteed rental for the renewal term has been established, the parties shall memorialize same in a writing to be prepared by Landlord.

FIRST AMENDMENT TO INDUSTRIAL COMPLEX LEASE

This FIRST AMENDMENT TO INDUSTRIAL COMPLEX LEASE ("Amendment") is made as of this 9th day of December, 2004 ("Effective Date"), by and between MP CARIBBEAN, INC., a Delaware corporation ("Landlord"), and ACCURAY INCORPORATED, a California corporation ("Tenant").

RECITALS

A. Pursuant to that certain Industrial Complex Lease, dated as of July 9, 2003, entered into by and between Landlord and Tenant ("Lease"), Landlord currently leases to Tenant, and Tenant leases from Landlord, certain Demised Premises (as defined in the Lease and more particularly shown on the plan attached as Exhibit "A" thereto), consisting of approximately forty thousand (40,000) rentable square feet in that certain Building located at 1310 Chesapeake Terrace, Sunnyvale, California. Except to the extent otherwise expressly provided in this Amendment, for purposes hereof, the Demised Premises (i.e., 1310 Chesapeake Terrace) shall be referred to herein as the "Original Premises."

B. Tenant desires to (i) expand the Demised Premises by leasing from Landlord certain premises adjoining the Original Premises and (ii) extend the Lease term, and Landlord is willing to permit the same, subject to the terms and conditions of this Amendment.

C. Capitalized terms used in this Amendment shall have the meaning ascribed to such terms in the Lease unless otherwise defined in this Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby amend, modify and supplement the Lease as follows:

1. *Lease of Additional Premises.* Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises consisting of approximately thirty-two thousand five hundred seventy-six (32,576) rentable square feet located in that certain Building in the Industrial Complex located at 1314 Chesapeake Terrace and more particularly shown on Exhibit "B" attached hereto ("Additional Premises"). Tenant's lease of the Additional Premises shall be subject to all of the terms and conditions of the Lease, except as set forth in this Amendment. Landlord and Tenant hereby agree and acknowledge that, from and after the Additional Premises Delivery Date (as defined in Section 2 below), (A) the term "Demised Premises" as used in the Lease shall collectively refer to (i) the Original Premises and (ii) the Additional Premises and (B) the rentable square footage of the Demised Premises shall be seventy-two thousand five hundred seventy-six (72,576).

2. *Condition of Additional Premises*. The Additional Premises are being leased to Tenant in "AS IS" condition with Tenant accepting all defects, if any; and, subject to the express provisions of this Section 2 and Section 3 hereof, Landlord makes no warranty of any kind, express or implied, with respect to the Additional Premises (without limitation, Landlord makes no warranty as to the habitability, fitness or suitability of the Demised Premises for a particular purpose nor as to the absence of any toxic or otherwise hazardous substances). This Section 2 is subject to any contrary requirements under applicable law; however, in this regard, Tenant acknowledges that it has been given the opportunity to inspect the Additional Premises and to have qualified experts inspect the Additional Premises prior to the execution of this Amendment. Except for Landlord's obligation to make the Allowance available to Tenant under the Work Letter Agreement attached hereto as Exhibit "C" ("Work Letter Agreement"), Landlord shall have no obligation to alter, repair or improve the Additional Premises for Tenant's use and occupancy thereof. Notwithstanding the foregoing, Landlord shall be responsible for any improvements or alterations that may be required under the Americans With Disabilities Act and regulations promulgated thereunder with respect to the Additional Premises in its existing condition as of the date hereof without regard to any improvements to be made by or behalf of Tenant. Tenant shall be responsible for any improvements or alterations that may be required to be made to the Additional Premises under the Americans With Disabilities Act and regulations promulgated thereunder with respect to any improvements made to the Additional Premises by or on

behalf of Tenant. In addition, to the extent any Hazardous Materials are discovered in the Additional Premises and removal of such Hazardous Materials is required under applicable Environmental Laws, Landlord shall remove such Hazardous Materials from the Premises at its sole cost and expense.

3. *Delivery of Additional Premises*. Landlord shall deliver the Additional Premises to Tenant on or before *December 22, 2004* ("Additional Premises Delivery Date") in order to allow Tenant to make preparations for its occupancy thereof, including for space planning, construction of tenant improvements, fixturization and the installation of Tenant's telephone, communications and computer equipment, cabling, furniture and personal property, all in accordance with the terms and conditions of the Work Letter Agreement. Landlord shall deliver the Additional Premises to Tenant in the condition specified in Section 2 above; provided, however, that the roof, heating, ventilating and air conditioning system, electrical, plumbing and lighting systems in the Additional Premises shall be in good working order on the Additional Premises Delivery Date. Tenant shall not be obligated to pay guaranteed minimum rental or Tenant's Proportionate Share of any real estate charges, insurance expenses or Common Area Charges during the period from the Additional Premises Delivery Date until the Additional Premises Rent Commencement Date (as defined in Section 5). Tenant shall provide Landlord with certificates of insurance showing Tenant maintains the insurance coverage required of Tenant under Sections 15.2 and 15.3 of the Lease with respect to the Additional Premises prior to taking possession of the Additional Premises.

4. *Extension of Lease Term*. Landlord and Tenant hereby extend the Lease term for the Original Premises for an additional five (5) calendar months until February 29, 2008 and the Lease term for the Additional Premises shall commence January 1, 2005 and expire on February 29, 2008 ("Extended Term").

5. *Rental.*

(a) *Additional Premises*. Commencing on January 1, 2005 ("Additional Premises Rent Commencement Date") and continuing on the first day of each calendar month thereafter during the Extended Term, Tenant shall pay guaranteed minimum rental for the Additional Premises as follows ("Additional Premises Guaranteed Minimum Rental"):

Extended Term Lease Month	Monthly Guaranteed Minimum Rental	Monthly Rental Rates
1-2	$ 0	$ O/RSF
3-14	$ 21,774.40	$ .65/RSF
15-26	$ 22,803.20	$ .70/RSF
27-38	$ 24,432	$ .75/RSF

The Additional Premises Guaranteed Minimum Rental shall be paid by Tenant during the Extended Term at the same time and in the same manner as set forth in Article 4 of the Lease; provided however, Tenant shall pay the Additional Premises Guaranteed Monthly Rental for the third (3rd) month of the Extended Term upon execution of this Amendment by Tenant.

(b) *Original Premises*. During the Extended Term, Tenant shall continue to pay minimum guaranteed rental for the Original Premises in the amount set forth in the Lease. During the last five (5) calendar months of the Extended Term, Tenant shall pay minimum guaranteed rental for the Original Premises in the amount of Thirty Thousand Dollars ($30,000) per month.

6. *Tenant's Proportionate Share*. Commencing with the Additional Premises Rent Commencement Date, Tenant pay the real estate charges, insurance expenses and Common Area Charges applicable to the Additional Premises in accordance with Articles 6 and 7 of the Lease. From

and after the Additional Premises Rent Commencement Date, Tenant's Proportionate Share with respect to the Demised Premises shall be as follows:

Tenant's Prorata Share of Building Common Area Costs	44.89%
Tenant's Prorata Share of Parcel Common Area Costs	22.09%
Tenant's Prorata Share of Industrial Complex Common Area Costs	12.85%

7. *Additional Security Deposit.* Concurrently with the execution of this Amendment, Tenant shall deposit with Landlord cash in the amount of Twenty-four Thousand Four Hundred Thirty-two Dollars ($24,432) ("Additional Security Deposit"), which Additional Security Deposit shall be held by Landlord as part of the Security Deposit in accordance with Article 8 of the Lease. Notwithstanding anything contained in Article 8 of the Lease, the Additional Security Deposit shall be held by Landlord separate and apart from any letter of credit Tenant has delivered to Landlord as part of the original Security Deposit.

8. *Parking*. From and after the Additional Premises Rent Commencement Date, Tenant shall be entitled to use a total of two hundred sixty-five (265) unreserved parking spaces in the parking areas of the Industrial Complex in connection with the Demised Premises in accordance with Article 7 of the Lease. Tenant shall be authorized to identify an additional twelve (12) "visitor parking" spaces, including four (4) "Accuray Visitor Parking" spaces in accordance with Exhibit "B", Article III, Section F of the Lease, and to be shown in a revised Exhibit "B-1" which the parties shall approve in writing and substitute for the existing Exhibit "B-1" attached to this Lease.

9. *Brokers*. Each party represents and warrants to the other party that it has not had dealings in any manner with any real estate broker, finder or other person with respect to the negotiation and execution of this Amendment except Wayne Mascia Associates, who has acted as Tenant's broker ("Tenant's Broker"), and South Bay Development Corporation, who has acted as Landlord's broker ("Landlord's Broker"). Except as to commissions and fees to be paid as provided hereunder, Tenant shall indemnify, defend and hold harmless Landlord from all damage, loss, liability and expense (including attorneys' fees and related costs) arising out of or resulting from any claims for commissions or fees that may or have been asserted against Landlord by any broker, finder or other person with whom Tenant has or purportedly has dealt with in connection with the negotiation and execution of this Amendment. Landlord shall pay broker leasing commissions to Tenant's Broker and Landlord's Broker pursuant to a separate agreement. Landlord and Tenant agree that Landlord shall not be obligated to pay any broker leasing commissions, consulting fees, finder fees or any other fees or commissions arising out of or relating to any extension of the Extended Term or to any further expansion or relocation of the Demised Premises at any time. All indemnities of Tenant set forth in this Amendment shall survive the expiration or earlier termination of the Lease.

10. *Right of First Opportunity*. The Right of First Opportunity set forth in Exhibit "D" to the Lease is hereby deleted.

11. *Option to Renew*. The Renewal Option set forth in Exhibit "E" to the Lease is hereby deleted and the following inserted in its place:

(a) *Grant of Option*. Tenant shall have the right to renew the term of this Lease upon the expiration of the Extended Term as to the entire Demised Premises (i.e., the Original Premises and Additional Premises) for one three-year term ("Renewal Term") upon prior written notice ("Tenant's Election Notice") to Landlord given not sooner than two hundred seventy (270) days nor later than one hundred eighty (180) days prior to the expiration of the Extended Term; provided that at the time Tenant gives such notice to Landlord and for the remainder of the Extended Term, (i) this Lease has not been assigned and Tenant continues to occupy ninety percent (90%) of the rentable square footage of the Demised Premises and (ii) Tenant is not in default under the Lease. During the Renewal Term, the provisions of this Lease, as it may be further amended in writing prior to the date of the

commencement of the Renewal Term, shall continue in effect except that Tenant shall occupy the Demised Premises in its then "AS IS" condition and there shall be no abatement of rent, nor shall there be credit or allowances given to Tenant for improvements to the Demised Premises, and the minimum guaranteed rental will be an amount equal to whatever monthly rental (plus whatever periodic adjustments) Landlord is then quoting to prospective tenants for new leases of comparable space in the Industrial Complex for a comparable term (as confirmed by written statement delivered to Tenant by a representative of Landlord within fifteen (15) days of delivery of Tenant's Election Notice ["Landlord's Confirmation Statement"]), or if no comparable space exists in the Industrial Complex, then one hundred percent (100%) of the projected prevailing market rate of rent for comparable space with comparable finish-out in comparable industrial buildings in comparable locations, as of the Extended Term expiration date (as confirmed by Landlord's Confirmation Statement delivered to Tenant by a representative of Landlord within fifteen (15) days of delivery of Tenant's Election Notice); provided, however, in no event shall the minimum guaranteed rental rate during such renewal term be less than the fully escalated minimum guaranteed rental rate being paid by Tenant with respect to the Original Premises during the last full calendar month of the Extended Term. Within fifteen (15) days after Tenant's receipt of Landlord's Confirmation Statement, Tenant may deliver to Landlord a written revocation of its exercise of the renewal right. In such event, Tenant's Election Notice shall be null and void and the Lease shall expire upon the expiration of the Extended Term. Tenant's failure to deliver such written revocation within said fifteen (15) day period shall be deemed Tenant's waiver of its right to revoke its exercise of the renewal right hereunder.

12. *ERISA Certificate*. Concurrently with Tenant's execution and delivery of this Amendment, Tenant shall execute and deliver to Landlord an ERISA Certificate in the form attached hereto as Exhibit "C."

13. *Corporate Authority*. Concurrently with the execution and delivery of this Amendment, Tenant shall provide Landlord with a certificate of incumbency or other evidence satisfactory to Landlord that the individuals executing this Amendment on behalf of Tenant are authorized to execute this Amendment and bind Accuray, Incorporated.

14. *Bonus Rent*. Notwithstanding anything contained in Section 19.4 of the Lease, in the event the rental due and payable by a sublessee (or a combination of the rental payable under such sublease plus any bonus or other consideration therefore or incident thereto) exceeds the rental payable under this Lease, or the rental payable with respect to the portion of the Demised Premises subject to the sublease, or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under the Lease, or the rental payable with respect to the portion of the Demises Premises subject to such assignment, license or other transfer, then Tenant shall be bound and obligated to pay Landlord fifty percent (50%) of all such excess rental and other excess consideration within ten (10) days following receipt thereof from such sublessee, assignee, licensee or other transferee, as the case may be, less (a) reasonable brokerage fees paid by Tenant in connection with the transaction, and (b) reasonable legal fees paid by Tenant in connection with the transaction.

15. *Effect of Amendment*. Except as modified herein, the terms and provisions of the Lease shall remain unmodified and continue in full force and effect. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

TENANT:

ACCURAY, INCORPORATED,
a California corporation

By: /s/ CHRIS A. RAANES

Its: COO

Printed Name: Chris A. Raanes

By: /s/ ROBERT E. MCNAMARA

Its: CFO

Printed Name: Robert E. McNamara

LANDLORD:

MP CARIBBEAN INC.,
a Delaware corporation

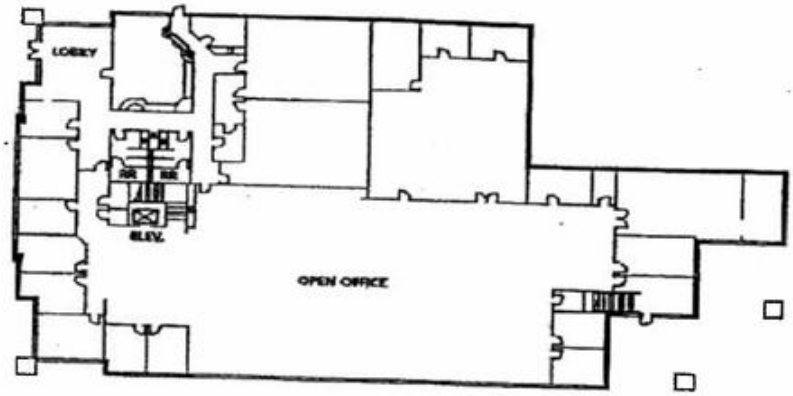
By: /s/ MICHAEL J. KRIER

Its: Vice President

Michael J. Krier

EXHIBIT "A"
FLOOR PLAN OF ORIGINAL PREMISES

First Floor



Second Floor

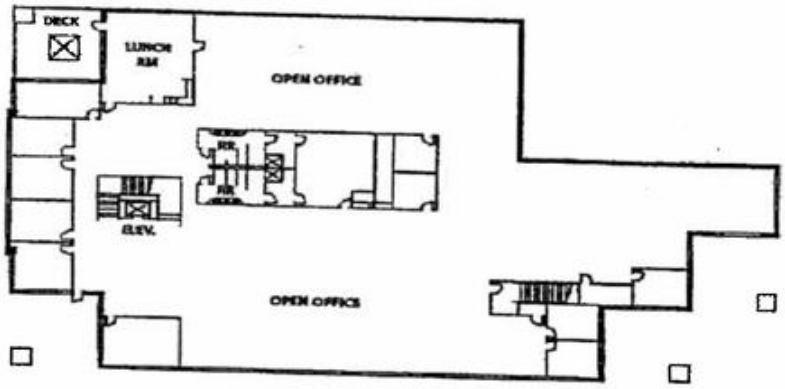
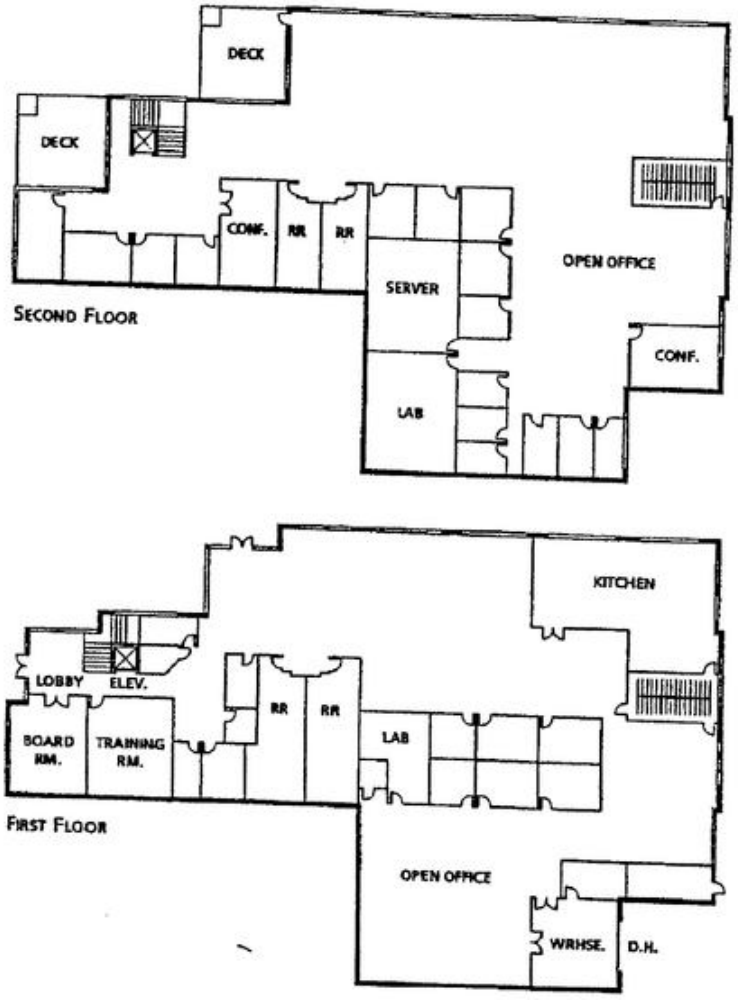


EXHIBIT "B"
FLOOR PLAN OF ADDITIONAL PREMISES



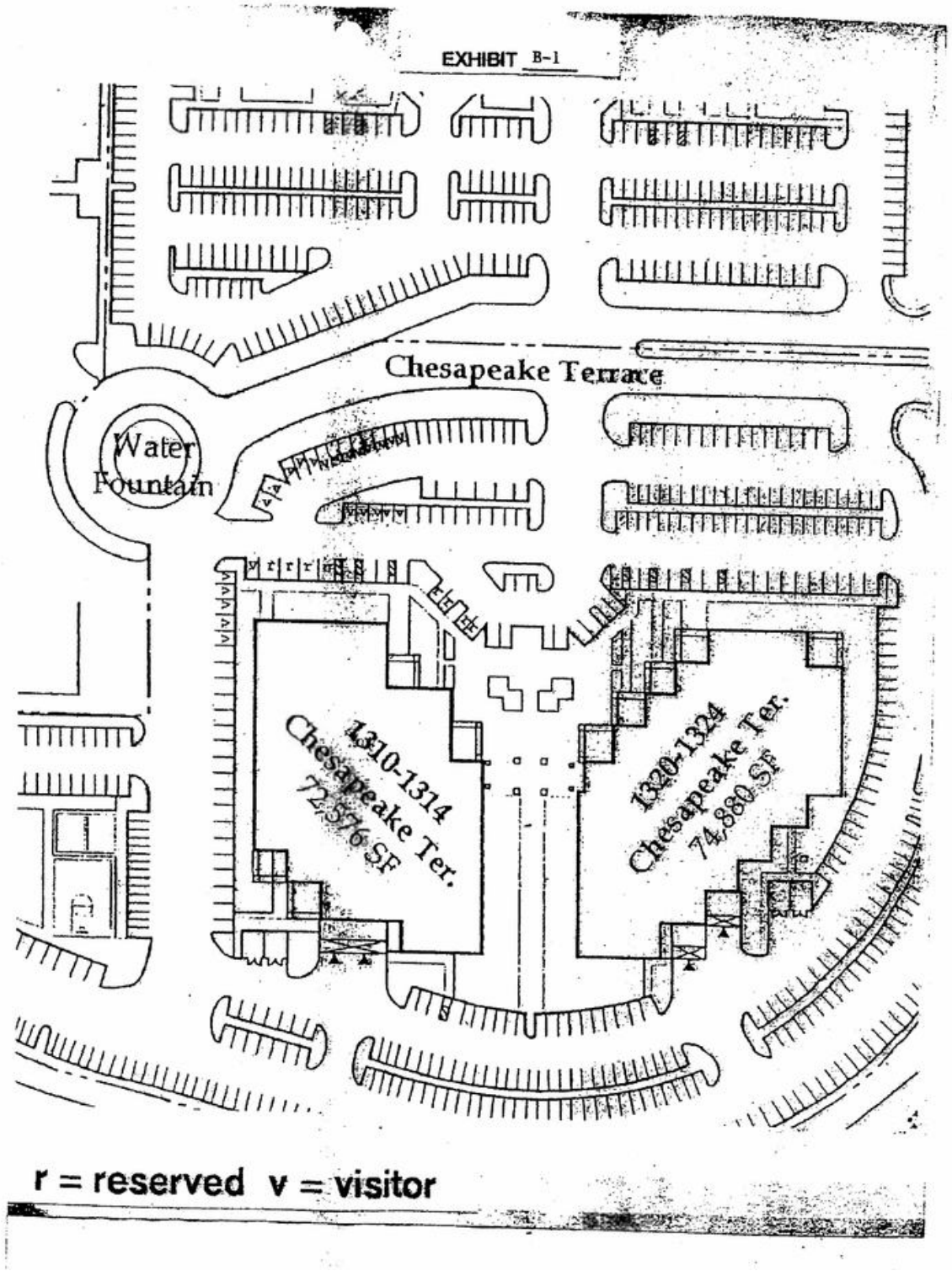


EXHIBIT B-1
Chesapeake Terrace
Water Fountain
1310-1314 Chesapeake Ter. 72,576 SF
1320-1324 Chesapeake Ter. 74,880 SF
r = reserved v = visitor

EXHIBIT "C"
WORK LETTER AGREEMENT

ARTICLE I. *GENERAL*

Tenant hereby accepts the Additional Premises "as is" and "ready for occupancy. Subject to Article IV below, Landlord shall have no obligation to perform any tenant improvements in the Additional Premises or to fund any such improvements. Prior to any modification of the Additional Premises by or on behalf of Tenant, Tenant shall adhere to the following as well as the provisions contained in Article 11 of the lease:

ARTICLE II. *PRE-CONSTRUCTION OBLIGATIONS*

A. Complete plans, diagrams, schedules and other data relating to work to be performed by Tenant in the Additional Premises must be furnished by Tenant to Landlord in form sufficient to obtain a building permit. Without limiting the generality of the immediately preceding sentence, Tenant's submissions must include a floor plan, a reflected ceiling plan, a plumbing plan, elevations of walls and a fixture plan. All drawings shall be at scale of either 1/8' or 1/4".

B. Tenant shall secure Landlord's written approval of all designs, plans, specifications, materials, contractors and contracts for work to be performed by Tenant before beginning the work (including following whatever "work letter" instructions, if any, which Landlord may deliver to Tenant in connection with the work), and shall secure all necessary licenses and permits to be used in performing the work. Tenant's finished work shall be subject to Landlord's approval and acceptance.

C. The insurance requirements under Article 15 of the Lease and the indemnity requirements under Article 16 of the Lease shall expressly apply during the construction contemplated in this exhibit, and Tenant shall provide evidence of appropriate insurance coverage prior to beginning any of Tenant's work. Tenant shall provide Landlord with evidence of insurance covering both Tenant and Tenant's contractor against damage to their personal property, as well as against third-party liability and workers' compensation claims arising out of all construction and associated activities. All policies of insurance shall be subject to Landlord's prior approval and shall be endorsed showing Landlord as an additional named insured (or if permitted by Landlord, may provide a waiver of subrogation against Landlord).

ARTICLE III. *DESCRIPTION OF TENANT'S WORK*

A. Signs: Tenant shall pay for all signs and the installation thereof, including the electrical hook-up, subject to the provisions of Section 13.1 of this lease.

B. Utilities: All meters or other measuring devices in connection with utility services shall be provided by Tenant. All service deposits shall be made by Tenant at Tenant's expense.

C. All work undertaken by Tenant shall be at Tenant's expense and shall not damage the Building or any part thereof. Any roof penetration shall be performed by Landlord's roofer or, at Landlord's option, by a bonded roofer approved in advance by Landlord. The work shall be begun only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plans, to include materials acceptable to Landlord, in order to prevent injury to the roof and to spread the weight of the equipment being installed. Tenant shall also be responsible for obtaining and paying for professional inspections of any structural work (including, without limitation, any roof work or concrete work).

D. All work performed by or at the behest of Tenant shall be in compliance with all applicable Regulations, the terms and conditions set forth in Article 11 of the Lease and the Tenant Construction Rules and Regulations attached as Exhibit "C" to the Lease.

E. Any code-required upgrades to the Additional Premises required as a result of Tenant's work performed under the terms of this *Exhibit "C"* or under the terms of Article 11 of the Lease shall be at Tenant's sole cost and expense, and shall not be deemed warranted by Landlord.

ARTICLE IV. *TENANT IMPROVEMENT ALLOWANCE*

A. Tenant shall be entitled to a tenant improvement allowance (the "Tenant Improvement Allowance") in the maximum amount of One Hundred Sixty-two Thousand Eight Hundred Eighty and No/100 Dollars ($162,880.00) for the costs relating to the initial design and construction of Tenant's improvements which are permanently affixed to the Additional Premises (the "Tenant Improvements"). In no event shall Landlord be obligated to make disbursements for Tenant Improvements in a total amount which exceeds the Tenant Improvement Allowance. Notwithstanding the foregoing, no portion of the Tenant Improvement Allowance may be applied to Tenant Improvements made to any portion of the Additional Premises which is then the subject of a sublease, or Tenant Improvements made to prepare any portion of the Additional Premises for a proposed or anticipated subtenant or assignee, or for material or supplies not located on the Additional Premises.

B. Landlord shall reimburse Tenant for costs and expenses actually incurred by Tenant for work actually performed, construction in place and/or materials delivered to the Additional Premises in connection with the design and construction of the Tenant Improvements (as described in Paragraph IV.A above) upon receipt (not more frequently than monthly) of (i) a written request from Tenant for reimbursement, (ii) invoices of Tenant's contractor, subcontractors or suppliers, as applicable, with evidence of payment thereof, (iii) conditional lien waivers executed by Tenant's contractor, subcontractors or suppliers, as applicable, for their portion of the work covered by the reimbursement request, (iv) in the case of final payment, unconditional lien waivers and mechanic's lien releases executed by Tenant's contractor, subcontractors or suppliers, as applicable (all such waivers and releases to be in the forms prescribed by California Civil Code Section 3262), and (v) all other information and documentation reasonably requested by Landlord. Landlord may withhold the amount of any and all retentions provided for in the original contracts or subcontracts until expiration of the applicable lien periods or Landlord's receipt of unconditional lien waivers and mechanic's lien releases executed by Tenant's contractor, subcontractors or suppliers, as applicable.

C. Under no circumstances shall Landlord be required to fund any portion of the Tenant Improvement Allowance when Tenant is in default under the Lease.

D. In the event any portion of the Tenant Improvement Allowance has not been funded as a reimbursement by that date which is one hundred eighty (180) days after the Additional Premises Deliver Date, such amount shall no longer be available for the payment of expenses in connection with the Tenant Improvements and shall be forfeited.

EXHIBIT "D"

ERISA CERTIFICATE

THIS ERISA CERTIFICATE is made as of December 9, 2004, by ACCURAY, INCORPORATED, a California corporation, having offices at 1310 Chesapeake Terrace, Sunnyvale, California ("Lessee"), in favor of MP Caribbean, Inc. a Delaware corporation ("Lessor") and the General Motors Hourly-Rate Employees Pension Plan, the General Motors Retirement Program for Salaried Employees, the Employees Retirement Plan for GMAC Mortgage Group, the Saturn Individual Retirement Plan for Represented Team Members, the Saturn Personal Choices Retirement Plan for Non-Represented Team Members, the Delphi Hourly-Rate Employees Pension Plan, and the Delphi Retirement Program for Salaried Employees, its shareholders/interestholders, c/o SSR Realty Advisors, Inc., One California Street, Suite 1400, San Francisco, CA 94111.

WITNESSETH:

WHEREAS, Lessor and Lessee anticipate entering into a First Amendment to Industrial Complex Lease (the "Lease Agreement"), pursuant to which Lessor shall lease to Lessee, and Lessee shall lease from Lessor, certain real property, known as and located at 1314 Chesapeake Terrace, Sunnyvale, California.

WHEREAS, Lessor is in need of certain information regarding Lessee so that it may proceed with the Lease Agreement.

NOW, THEREFORE, Lessee hereby certifies, represents, warrants and covenants to Lessor that as of the date hereof:

Representation 1. Type of Lessee (check applicable boxes)

☒ Lessee is not an "employee benefit plan" ("Plan") as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title 1 of ERISA.

☒ Lessee is not a "governmental plan" within the meaning of Section 3(32) of ERISA.

Representation 2. Complete if Lessee is not a Plan and Has Shareholders or Interestholders (check applicable boxes)

One or more of the following circumstances also is true:

o Equity interests in Lessee are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

☒ Less than 25 percent of all equity interests in Lessee are held by "benefit plan investors," which are defined as: (i) any employee benefit plan, whether or not subject to Title 1 of ERISA; (ii) any plan described in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended; and (iii) any entity whose underlying assets include plan assets by reason of a plan's investment in the entity; or

☒ Lessee is a corporation that qualifies as an "operating company," a "venture capital operating company," or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c), (d) and (e) (each, an "Operating Company").

Representation 3. Lessee's relation to Lessor and Lessor's Shareholders/Interestholders (check applicable boxes.)

Lessee is not a party in interest as defined in section 3(14) of ERISA with respect to Lessor or its shareholders or interestholders, the General Motors Hourly-Rate Employees Pension Plan, the General Motors Retirement Program for Salaried Employees, the Employees Retirement Plan for GMAC

Mortgage Group, the Saturn Individual Retirement Plan for Represented Team Members, the Saturn Personal Choices Retirement Plan for Non-Represented Team Members, the Delphi Hourly-Rate Employees Pension Plan, and the Delphi Retirement Program for Salaried Employees, because Lessee is not:

☒ a fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel, or employee of Lessor or its shareholders or interestholders ("Fiduciary");

☒ a person providing services to Lessor or its shareholders or interestholders ("Service Provider");

☒ an employer any of whose employees are provided employment benefits by Lessor or its shareholders or interestholders ("Employer");

☒ an employee organization any of whose members are provided employment benefits coverage by Lessor or its shareholders or interestholders ("Employee Organization");

☒ an owner, direct or indirect, of 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an Employer or an Employee Organization ("Owner");

☒ a spouse, ancestor, lineal descendant, or spouse of a lineal descendant of a Fiduciary, Service Provider, Employer, or an Owner;

☒ a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate is owned directly or indirectly, or held by a Fiduciary, Service Provider, Employer, Employee Organization, or Owner ("Corporate Owner");

☒ an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a Service Provider, Employer, Employee Organization, Owner, or a Corporate Owner; or

☒ a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a Service Provider, Employer, Employee Organization, Owner, or a Corporate Owner.

Representation 4. Indemnity, Guaranty

Lessee shall indemnify Lessor and defend and hold Lessor harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lessor's sole discretion) that Lessor may incur, directly or indirectly, as a result of the Lessee's representation contained in this certificate.

Representation 5. Survival

Lessee represents that the certifications, representations, warranties and covenants contained herein shall remain true and correct throughout the term of the Lease Agreement.

ACCURAY, INCORPORATED,
a California corporation

BY: /s/ [SIGNATURE ILLEGIBLE]

NAME: Signature Illegible

ITS: Vice President and Controller

SECOND AMENDMENT TO INDUSTRIAL COMPLEX LEASE

THIS SECOND AMENDMENT TO INDUSTRIAL COMPLEX LEASE (this "**Amendment**") is made and entered into as of September 25, 2006, by and between **BRCP CARIBBEAN PORTFOLIO, LLC, a Delaware limited liability company**("**Landlord**"), and **ACCURAY INCORPORATED, a California corporation** ("**Tenant**").

RECITALS

A. Landlord (as successor in interest to MP Caribbean, Inc., a Delaware corporation) and Tenant are parties to that certain Industrial Complex Lease dated as of July 9, 2003 (the "**Original Lease**"), which Original Lease has been previously amended by that First Amendment to Industrial Complex Lease dated as of December 9, 2004 (the "**First Amendment**") (collectively, the "**Lease**"). Pursuant to the Lease, Landlord has leased to Tenant space currently containing approximately **72,576** rentable square feet (the "**Original Premises**") described as approximately 40,000 rentable square feet in that certain building located at 1310 Chesapeake Terrace, Sunnyvale, California and approximately 32,576 rentable square feet in that certain building located at 1314 Chesapeake Terrace, Sunnyvale, California (collectively, the "**Buildings**"), which are a part of the approximately 253,540 rentable square foot industrial complex commonly referred to as Caribbean Corporate Center (the "**Industrial Complex**").

B. Tenant has requested that additional space containing approximately **52,992** rentable square feet of the building located at 1315 Chesapeake Terrace, Sunnyvale, California (the "**Expansion Building**") and shown on **Exhibit A** hereto (the "**Expansion Space**") which is a part (of the Industrial Complex, be added to the Original Premises and that the Lease be appropriately amended and Landlord is willing to do the same on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. ***Expansion and Effective Date***. Effective as of the Expansion Effective Date (defined below), the Original Premises is increased from approximately 72,576 rentable square feet of the Industrial Complex to approximately **125,568** rentable square feet of the Industrial Complex by the addition of the Expansion Space, and from and after the Expansion Effective Date, the Original Premises and the Expansion Space, collectively, shall be deemed the Demised Premises, as defined in the Lease and as used herein. The term for the Expansion Space (the "**Expansion Space Term**") shall commence on the Expansion Effective Date and end upon the expiration of the forty-second (42nd) full calendar month of the Expansion Space Term (i.e., May 31, 2010). For clarity, the parties hereto intend the following: (i) subject to the terms and conditions of the Lease, as amended hereby, the Expansion Space Term shall end on May 31, 2010, and (ii) the Extended Term (as defined in the First Amendment) for the Original Premises shall end, subject to the terms and conditions of the Lease, as amended hereby on February 29, 2008, unless Tenant validly elects to exercise its Renewal Option set forth in Section 11 of the First Amendment. Nothing set forth herein shall modify the Extended Term (as defined in the First Amendment) of the Original Premises. The Expansion Space is subject to all the terms and conditions of the Lease except as expressly modified herein and except that Tenant shall not be entitled to receive any allowances, abatements or other financial concessions granted with respect to the Original Premises unless such concessions are expressly provided for herein with respect to the Expansion Space.

(a) The "**Expansion Effective Date**" shall be November 15, 2006. Landlord shall use good faith, commercially reasonable efforts to substantially complete the Expansion Space Improvements on or before the Expansion Effective Date; provided, however, that Tenant hereby acknowledges and agrees that any delays in such substantial completion of the Expansion Space Improvements shall not subject

Landlord to any liability therefor and the Expansion Effective Date shall not be delayed or extended as a result thereof. Landlord represents that as of the date of this Amendment, the Expansion Space is currently vacant and no other tenant is in possession thereof.

2. ***Minimum Guaranteed Rental***. In addition to Tenant's obligation to pay minimum guaranteed rental for the Original Premises, Tenant shall pay Landlord minimum guaranteed rental for the Expansion Space as follows:

Period of Term	Annual Rate Per Square Foot	Annual Minimum Guaranteed Rental	Monthly Minimum Guaranteed Rental
Month 1 - Month 6	$ 6.90	$ 365,644.80	$ 30,470.40
Month 7 - Month 12	$ 13.80	$ 731,289.60	$ 60,940.80
Month 13 - Month 24	$ 14.40	$ 763,084.80	$ 63,590.40
Month 25 - Month 36	$ 15.00	$ 794,880.00	$ 66,240.00
Month 37 - Month 42	$ 15.60	$ 826,675.20	$ 68,889.60

All such minimum guaranteed rental shall be payable by Tenant in accordance with the terms of the Lease, as amended hereby.

3. ***Tenant's Proportionate Share.*** During the Expansion Space Term, Tenant's Proportionate Share for the Expansion Building is 100%. Tenant's Proportionate Share for the Parcel Common Area Costs (consisting of the Common Area Charges for the real property tax parcel containing 1310 and 1314 Chesapeake Terrace, Sunnyvale, California) for the Original Premises is 49.22% (i.e., 27.13% as specified in the Original Lease, plus 22.09% as specified in the First Amendment). Tenant's Proportionate Share for the Parcel Common Area Costs (consisting of the Common Area Charges for the real property tax parcel containing 1315 Chesapeake Terrace, Sunnyvale, California) for the Expansion Space is 50.0%. Tenant's Proportionate Share for the Industrial Complex Common Area Costs is increased during the Expansion Space Term from 28.63% (i.e., 15.78% as specified in the Original Lease plus 12.85% specified in the First Amendment) to 49.53%. Tenant's Proportionate Share shall be appropriately decreased following the first to occur of the following: (i) the expiration of the Extended Term (as defined in the First Amendment) if the Demised Premises is reduced (i.e., Tenant shall not have validly exercised its Renewal Option set forth in Section 11 of the First Amendment), and (ii) the expiration of the Expansion Space Term (i.e., Tenant shall have validly exercised its Renewal Option with respect to the Original Premises set forth in Section 11 of the First Amendment).

4. ***Taxes, Other Real Estate Charges, Insurance Expenses and Common Area Charges***. For the period commencing with the Expansion Effective Date and ending on the termination of the Expansion Space Term, Tenant shall pay for Tenant's Proportionate Share of Taxes, Other Real Estate Charges, Insurance Expenses and Common Area Charges applicable to the Expansion Space in accordance with the terms of the Lease. Tenant's Proportionate Share of Taxes, Other Real Estate Charges and Common Area Charges for the Expansion Space are estimated to be $15,897.60 per month.

Notwithstanding anything to the contrary, so long as Tenant is not in default under the Lease, as amended hereby, Tenant shall be entitled to a fifty percent (50%) abatement of Tenant's Proportionate Share of Taxes. Other Real Estate Charges, Insurance Expenses and Common Area Charges applicable to the Expansion Space, as described in this Amendment for six (6) full calendar months of the Expansion Space Term, commencing with the first full calendar month of the Expansion Space Term (collectively, the "**Abated Additional Rent**"). If Tenant defaults under the Lease at any time during the Expansion Space Term and fails to cure such default within any applicable cure period under the Lease, then all Abated Additional Rent shall immediately become due and payable. Only Tenant's Proportionate Share of Taxes, Other Real Estate Charges, Insurance Expenses and Common Area Charges shall be abated pursuant to this Section, as more particularly described herein, and all other

costs and charges specified in the Lease, as amended hereby, shall remain as due and payable pursuant to the provisions of the Lease.

5. ***Additional Security Deposit.*** Upon Tenant's execution hereof, Tenant shall pay Landlord the sum of $68,889.60 which is added to and becomes part of the Security Deposit, if any, held by Landlord as provided under Section 8 of the Original Lease as security for payment of rent and the performance of the other terms and conditions of the Lease by Tenant. Accordingly, simultaneous with the execution hereof, the Security Deposit is increased from $324,432.00 to $393,321.16.

6. ***Expansion Space Improvements***. Except as expressly provided for in this Amendment, including, without limitation, Section 9 below, Tenant has inspected the Expansion Space and agrees to accept the same "as is" without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements. Landlord shall perform improvements to the Expansion Space in accordance with the terms and conditions set forth in Exhibit B hereto.

7. ***Early Access to Expansion Space***. During any period that Tenant shall be permitted to enter the Expansion Space prior to the date Landlord substantially completes the Expansion Space Improvements and tenders possession of the Expansion Space to Tenant for Tenant's permitted use, (e.g., to perform Exhibit Work, install cable, or perform alterations or improvements, if any), Tenant shall comply with all terms and provisions of the Lease, except, with respect to any period of such early access prior to the Expansion Effective Date, Tenant shall not be required to comply with those provisions requiring payment of minimum guaranteed rental or Taxes, Other Real Estate Charges, Insurance Expenses and Common Area Charges as to the Expansion Space. If Tenant takes possession of the Expansion Space prior to the date Landlord substantially completes the Expansion Space Improvements and tenders possession of the Expansion Space to Tenant for any reason whatsoever (other than the performance of the Exhibit Work or other work in the Expansion Space described below in this Section 7), such possession shall be subject to all the terms and conditions of the Lease and this Amendment, and Tenant shall pay minimum guaranteed rental and taxes, Other Real Estate Charges, Insurance Expenses and Common Area Charges as applicable to the Expansion Space to Landlord on a per diem basis for each day of occupancy prior to the Expansion Effective Date. Subject to the terms of the Lease, as amended hereby, Landlord grants Tenant the right to enter the Expansion Space, following full execution and delivery of this Amendment, the additional Security Deposit and certificates of insurance for the Expansion Space to Landlord, solely for the purpose of construction of Tenant's trade show exhibits (the "**Exhibit Work**"), provided that such Exhibit Work shall not be located near or otherwise occur proximate to Landlord's construction of the Expansion Space Improvements (as determined by Landlord). In the event that Landlord reasonably determines that Tenant's performance of the Exhibit Work or other work in the Expansion Space set forth below in this Section 7 is compromising Landlord's ability to timely and reasonably perform the Expansion Space Improvements or that Tenant is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees, Landlord, in its sole discretion, may (i) require that Tenant immediately vacate the Expansion Space and remove any personal property of Tenant contained therein, in which event Tenant shall so vacate the Expansion Space and remove such property, or (ii) require that Tenant relocate (including Tenant's personal property) to another location in the Expansion Space (determined by Landlord), in which event Tenant shall so relocate to such location. In addition to the foregoing, during such period of early access, Tenant may, (i) following installation of the ceiling grid in the Expansion Space, install telecommunications and data cabling in the Expansion Space, and (ii) following Landlord's installation of the carpeting in the Expansion Space, install equipment, furnishings and other personalty, all at Tenant's sole risk. Tenant shall be liable for any utilities or special services provided to Tenant during such period. Landlord may withdraw such permission to enter the Expansion Space prior to the substantial completion of the Expansion Space Improvements and delivery of the Expansion Space to Tenant at any time that Landlord reasonably determines that

such entry by Tenant is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees, or if Landlord reasonably determines that such entry by Tenant is hampering or otherwise preventing Landlord from proceeding with the completion of the Expansion Space Improvements described in **Exhibit B** attached hereto at the earliest possible date. In any event, during any period of such early access, Tenant shall promptly vacate the Expansion Space (and remove any personal property therefrom) upon notice from Landlord that Landlord is prepared to begin installation of carpeting in the Expansion Space (pursuant to the Plans).

8. ***Access.*** Tenant shall have access to the Expansion Space for Tenant and its employees, agents, representatives, customers, visitors, invitees, licensees and contractors 24 hours per day/7 days per week, subject to the terms of the Lease, as amended hereby, and such security or monitoring systems as Landlord may reasonably impose, including, without limitation, sign-in procedures and/or presentation of identification cards.

9. ***Base Building Systems***. However, notwithstanding the foregoing, Landlord agrees that the base Building electrical, heating, ventilation and air conditioning, roof and plumbing systems located in the Expansion Space shall be in good working order as of the date Landlord delivers possession of the Expansion Space to Tenant. Except to the extent caused by the acts or omissions of Tenant or any of Tenant's employees, agents, representatives, customers, visitors, invitees, licensees, contractors, assignees or subtenants or by any alterations or improvements performed by or on behalf of tenant, if such systems are not in good working order as of the date possession of the Expansion Space is delivered to Tenant and Tenant provides Landlord with notice of the same within sixty (60) days following the date Landlord delivers possession of the Expansion Space to Tenant for Tenant's permitted use (excluding the early access period set forth in Section 7 above), Landlord shall be responsible for repairing or restoring the same; provided, however, that the sixty (60) day period described above shall be increased to one hundred twenty (120) days for the roof only. In the event that any such system is not in good working order and Tenant so notifies Landlord of the same during the stated time periods set forth above, Landlord shall in good faith make commercially reasonable efforts to bring such system into good working order within a commercially reasonable time.

10. ***Parking.*** In addition to the parking rights Tenant has under the Lease, Tenant shall have the right to the nonexclusive use of Tenant's Proportionate Share of parking spaces (3.5 unreserved parking spaces per 1,000 rentable square feet of the Expansion Space), which as of the date of this Amendment shall be one hundred eighty-five (185) unreserved parking spaces (the "**Expansion Space Parking Spaces**"), for the parking of such number of motor vehicles in the parking facilities of the Industrial Complex designated by Landlord; such rights are not transferable without Landlord's approval. The use of such parking facilities for the Original Premises and/or the Expansion Space shall be subject to such rules and regulations as are adopted by Landlord from time to time for the use of such facilities. Tenant acknowledges and agrees that, to the fullest extent permitted by law, Landlord shall not be responsible for any loss or damage to Tenant or Tenant's property (including, without limitation, any loss or damage to any Tenant or of Tenant's trustees, members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents (collectively, the "**Tenant Parties**") automobile or the contents thereof due to theft, vandalism or accident) arising from or related to use of any of the parking facilities, whether or not such loss or damage results from Landlord's or any Landlord Parties' (as defined in Section 12(d) below) negligence (provided that the foregoing limitation on Landlord's liability shall not apply to Landlord's gross negligence or willful misconduct). Of the Expansion Space Parking Spaces, Tenant shall be authorized to identify fifteen (15) "visitor parking" spaces, including ten (10) "Accuray Visitor Parking" spaces in accordance with Article III, Section F of Exhibit B of the Original Lease.

11. ***Other Provisions***. Landlord and Tenant agree that, effective as of the date of this Amendment (unless different effective dates are specifically referenced in this Section), the Lease shall be amended in the following additional respects:

(a) **Signage.** The following shall be added to the end of Section 13.1 of the Original Lease: "Notwithstanding the foregoing, Landlord shall provide and install, at Landlord's expense, initial Building standard identification signage for Tenant in at the entry to the Expansion Building. Any changes thereto shall be at Tenant's cost, except changes due solely to Landlord's error."

(b) **Sublease/Assignment Excess Rent.** The second (2^{nd}) sentence of Section 19.4 of Original Lease is hereby deleted in its entirety and replaced with the following: "Notwithstanding anything contained in this Section, in the event that the rental due and payable by a sublessee (or combination of the rental payable under such sublease plus any bonus or other consideration therefore or incident thereto) exceeds the rental payable under this lease, or if with respect to a permitted assignment, permitted licensee or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this lease, then Tenant shall be bound and obligated to pay Landlord fifty percent (50%) of such excess rental and other excess consideration with respect to the Original Premises and fifty percent (50%) of all such excess rental and other excess consideration with respect to the Expansion Space within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case may be, after deducting any reasonable out-of-pocket brokerage commissions and legal fees incurred in connection with such assignment or sublease."

(c) **Option to Renew.** The parties hereto acknowledge and agree that Section 11 of the First Amendment shall not apply with respect to the Expansion Space.

(d) **Tenant Improvement Allowance.** Tenant acknowledges that Landlord has satisfied its obligations under **Exhibit C** of the First Amendment with respect to the Tenant Improvement Allowance.

(e) **Landlord's Name.** Landlord's name as set forth in Subsection 1.1(a) of the Original Lease is hereby deleted in its entirety and replaced with the following:

"Landlord: BRCP Caribbean Portfolio, LLC, a Delaware limited liability company."

(f) **Landlord's Address.** Landlord's address as set forth in Subsection 1.1 of the Original Lease is hereby deleted in its entirety and replaced with the following:

"BRCP Caribbean Portfolio, LLC
c/o Broadreach Capital Partners, LLC
248 Homer Avenue
Palo Alto, California 94301"

(g) **Agent.** The parties hereto acknowledge and agree there shall be no agent on behalf of Landlord, and thereby all references to "Agent" under the Lease are hereby replaced with "Landlord".

(h) **Damages After Default.** Section 22.2(c) of the Original Lease is hereby deleted in its entirety and replaced by the following:

"22.2(c) Should Landlord terminate this Lease pursuant to the provisions of Section 21.1(a) hereof, Landlord shall have the rights and remedies of a Landlord provided by Section 1951.2 of the Civil Code of the State of California, or any successor code sections. Upon such termination, in addition to any other rights and remedies to which Landlord may be entitled under applicable law or at equity, Landlord shall be entitled to recover from Tenant: (a) the

worth at the time of award of the unpaid Rent and other amounts which had been earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent and other amounts that would have been earned after the date of termination until the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid Rent and other amounts for the balance of the Term after the time of award exceeds the amount of such rent loss that the Tenant proves could be reasonably avoided; and (d) any other amount and court costs necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom. The "worth at the time of award" as used in clauses (a) and (b) above shall be computed at the Default Rate (defined below). The "worth at the time of award" as used in clause (c) above shall be computed by discounting such amount at the Federal Discount Rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). If this Lease provides for any periods during the Term during which Tenant is not required to pay minimum guaranteed rent or if Tenant otherwise receives a rent concession, then upon the occurrence of an event of default, Tenant shall owe to Landlord the full amount of such minimum guaranteed rent or value of such rent concession, plus interest at the applicable interest rate, calculated from the date that such minimum guaranteed rent or rent concession would have been payable."

(i) **Waiver.** TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE LEASE TERM PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH.

(j) **Common Area Costs.** Tenant's Proportionate Share of Common Area Costs with respect to the Expansion Space only shall not include any cost or expense related to removal, cleaning, abatement or remediation of "hazardous materials" in or about the Common Areas of the Expansion Building, including, without limitation, hazardous substances in the ground water or soil, except to the extent such removal, cleaning, abatement or remediation is related to the general repair and maintenance of the Common Areas. The foregoing exclusion shall not apply to Tenant's Proportionate Share obligations to the Common Areas of the Original Premises. Except as otherwise stated in this subsection (j) and/or in this Amendment, the terms and conditions of the Lease shall remain unchanged and in full force and effect.

(k) **Assignment.** If, during the Term, Tenant reincorporates its state of formation from the State of California to the State of Delaware, Landlord's consent under the Lease shall not be required for such transfer if all of the following conditions precedent are satisfied to Landlord's reasonable satisfaction: (i) such transfer occurs solely in connection with any bona fide corporate transaction for the benefit of Tenant, (ii) Tenant's assets shall not materially decrease and Tenant's liabilities shall not materially increase as a result or otherwise in connection with such reincorporation, (iii) Tenant provides to Landlord written notice no more than ten (10) business days after such reincorporation, and (iv) there is no Default by Tenant at the time of the transfer.

12. ***Miscellaneous.***

(a) This Amendment, including **Exhibit A** and **Exhibit B** hereto, sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Unless specifically set forth in this Amendment, under no circumstances shall Tenant be entitled to any rent abatement, improvement allowance, leasehold

improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease.

(b) Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control. The capitalized terms used in this Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Amendment.

(c) Submission of this Amendment by Landlord is not an offer to enter into this Amendment but rather is a solicitation for such an offer by Tenant. Landlord shall not be bound by this Amendment until Landlord has executed and delivered the same to Tenant.

(d) Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment other than Wayne Mascia Associates ("**Tenant's Broker**"). Tenant agrees to indemnify and hold Landlord, its trustees, members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents (collectively, the "**Landlord Parties**") harmless from all claims of any brokers, except Tenant's Broker, claiming to have represented Tenant in connection with this Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Amendment other than Colliers International ("**Landlord's Broker**"). Landlord agrees to indemnify and hold Tenant harmless from all claims of any brokers, except Landlord's Broker, claiming to have represented Landlord in connection with this Amendment. Landlord shall pay broker leasing commissions to Tenant's Broker and Landlord's Broker pursuant to a separate agreement and the parties hereto acknowledge and agree that this provision shall supersede any provision to the contrary in the Lease.

(e) Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("**OFAC**"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the Term, an uncured event of default under the Lease will be deemed to have occurred, without the necessity of notice to Tenant.

(f) Redress for any claim against Landlord under the Lease and this Amendment shall be limited to and enforceable only against and to the extent of Landlord's interest in the Building. The obligations of Landlord under the Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its trustees or board of directors and officers, as the case may be, its investment manager, the general partners thereof, or any beneficiaries, stockholders, employees, or agents of Landlord or the investment manager.

[SIGNATURES ARE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the day and year first above written,

LANDLORD:

BRCP CARIBBEAN PORTFOLIO, LLC,
a Delaware limited liability company

By: /s/ JOHN FOSTER

Name: John Foster

Title: Managing Director

TENANT:

ACCURAY INCORPORATED,
a California corporation

By: /s/ CHRIS A. RAANES 9/27/2006

Name: Chris A. Raanes

Title: Chief Operating Officer

By: /s/ DARREN J. MILLIKEN

Name: Darren J. Milliken

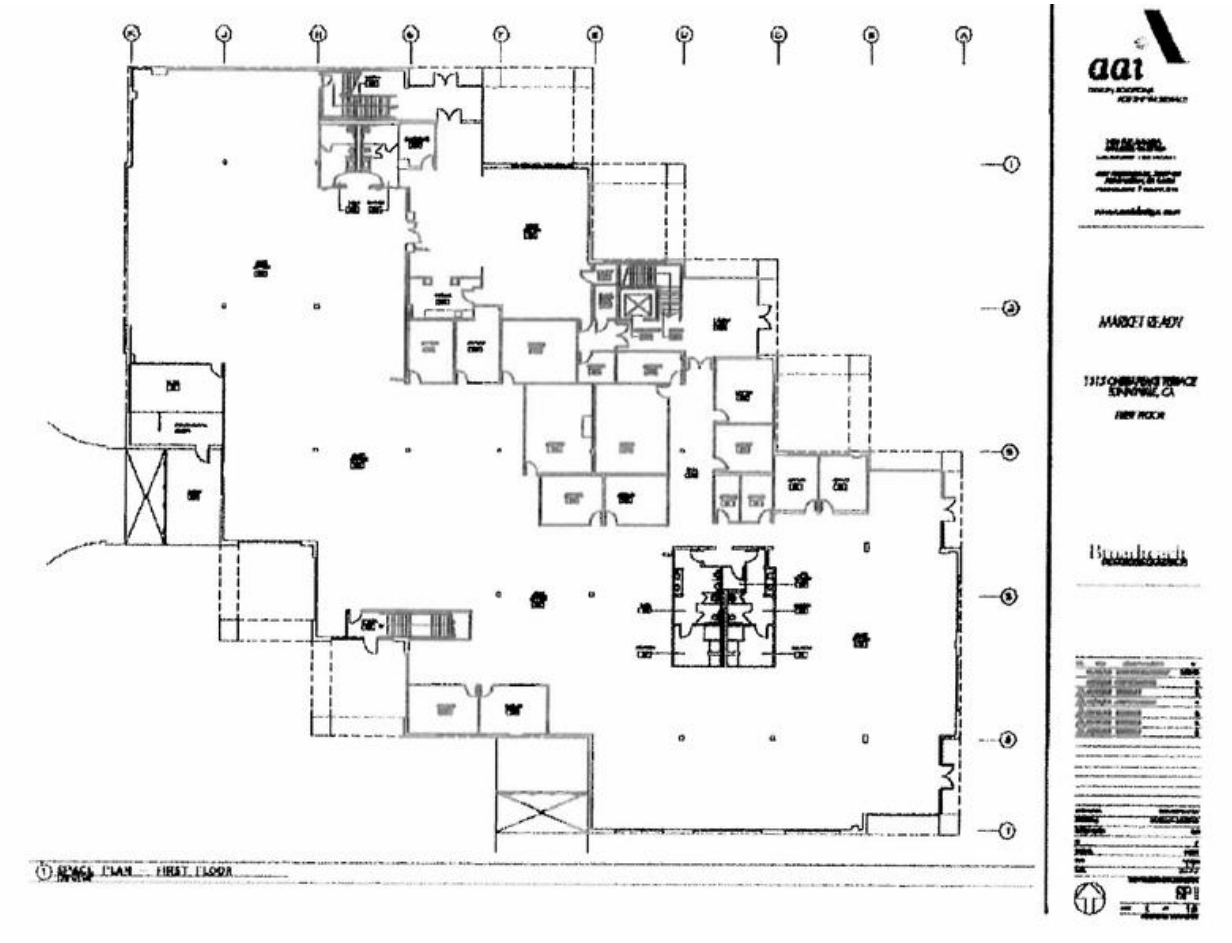
Title: General Counsel

9/27/2006

EXHIBIT A

OUTLINE AND LOCATION OF EXPANSION SPACE

This Exhibit is attached to and made a part of the Second Amendment to Industrial Complex Lease dated September 25, 2006 by and between **BRCP CARIBBEAN PORTFOLIO, LLC, a Delaware limited liability company ("Landlord")** and **ACCURAY INCORPORATED, a California corporation ("Tenant")**.



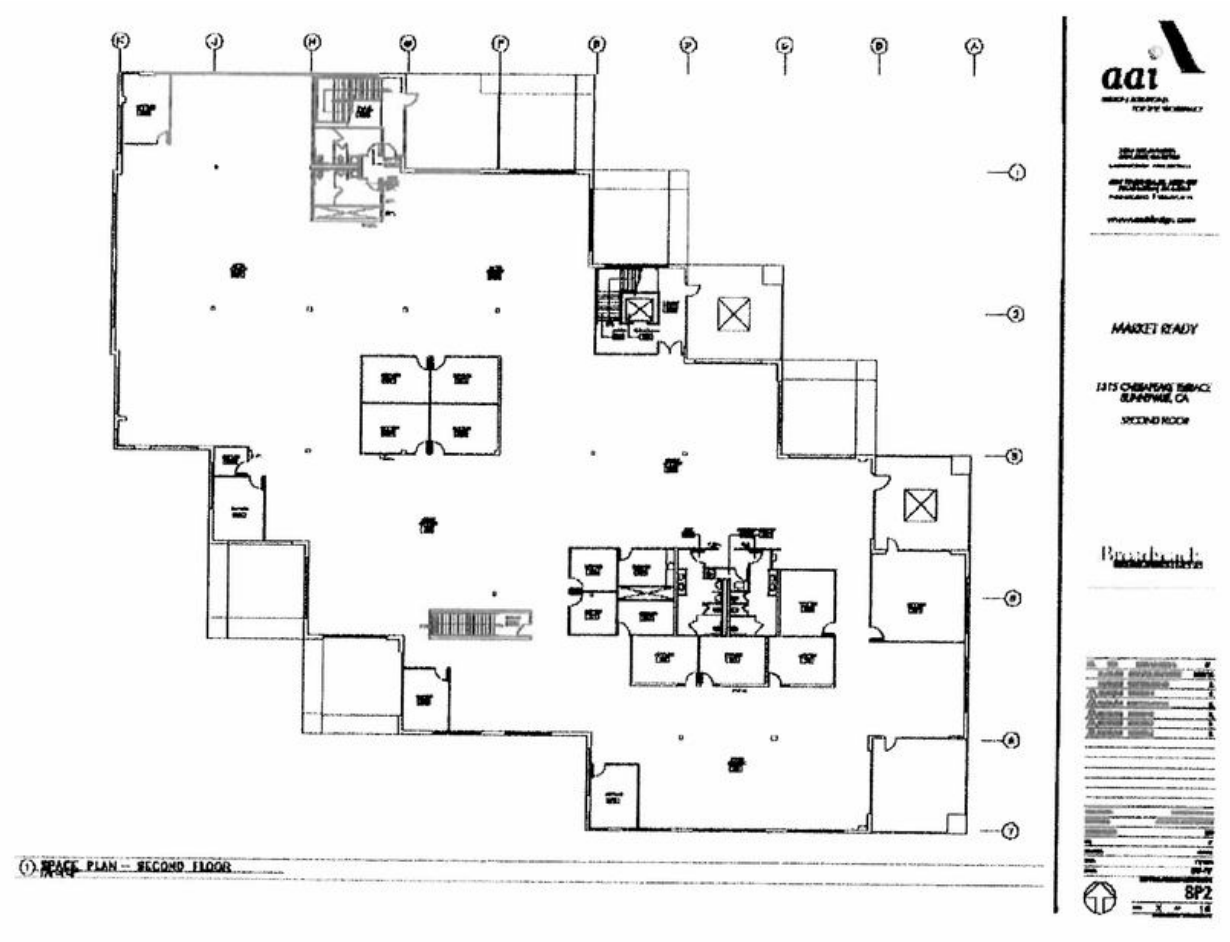

aai
MARKET READY
SECOND FLOOR
SP2
1 SPACE PLAN - SECOND FLOOR

EXHIBIT B

EXPANSION SPACE IMPROVEMENTS

This Exhibit is attached to and made a part of the Second Amendment to Industrial Complex Lease dated September 25, 2006 by and between **BRCP CARIBBEAN PORTFOLIO, LLC, a Delaware limited liability company** ("**Landlord**") and **ACCURAY INCORPORATED, a California corporation** ("**Tenant**"). Capitalized terms not otherwise defined in this **Exhibit B** shall have the meaning given to such terms in the Amendment of which this **Exhibit B** is a part.

1. Landlord shall perform improvements to the Expansion Space in accordance with the plans prepared by aai Design, dated July 27, 2006 (the "**Plans**"). The improvements to be performed by Landlord in accordance with the Plans are hereinafter referred to as the "**Expansion Space Improvements**." It is agreed that construction of the Expansion Space Improvements will be completed at Landlord's sole cost and expense (subject to the terms of Section 2 below) using Building standard methods, materials and finishes and as otherwise reasonably determined by Landlord (provided however, that (i) with respect to Landlord's obligation to install new carpeting within the Expansion Space, Landlord shall install the following non-Building standard carpet pursuant to the Plans: Manufacturer: Crossley, Style: Moraine 30363, Color: Mont Blanc 03658, 28 ounce, Pile: Dynex SD Nylon, and (ii) with respect to any Landlord obligation to paint the interior walls of the Expansion Space, Landlord shall use the following Kelly Moore Paints: Light Blue (1686-222 Medium Tint, 05-0677 BA-Color), Dark Blue (1010-333 Deep Tint, 04-0167 BA-Color), Light Green (1686-222 Medium Tint, 00-2416 BA-Color) and White (1686-121, 02-0014 BA-Color). Landlord shall substantially complete the Expansion Space improvements. For purposes of the foregoing, "substantially complete" shall mean that Landlord shall obtain from the appropriate governmental authorities, with respect to the Expansion Space Improvements performed by Landlord or its contractors in the Expansion Space, all approvals necessary for the occupancy of the Premises. Landlord shall enter into a direct contract for the Expansion Space Improvements with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Expansion Space Improvements. Landlords supervision or performance of any work for or on behalf of Tenant shall not be deemed a representation by Landlord that such Plans or the revisions thereto comply with applicable insurance requirements or that the improvements constructed in accordance with the Plans and any revisions thereto will be adequate for Tenant's use, it being agreed that Tenant shall be responsible for the configuration of the Expansion Space and the placement of Tenant's furniture, appliances and equipment therein. Landlord, at its sole cost and expense, shall be responsible for correcting any violations of Federal, City and State or local laws, regulations or ordinances with respect to the Expansion Space improvements prior to the installation of any furniture, equipment and other personal property of Tenant and, unless and only to the extent contributed to or exacerbated by Tenant or any of its contractors, agents, employees or invitees, Tenant shall have no liability for any fines incurred by Landlord in connection with any such violation. Notwithstanding the foregoing, so long as the same does not prohibit Tenant from using the Expansion Space for the permitted use, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by law. Landlord, after the exhaustion of any and all rights to appeal or contest, will make all repairs, additions, alterations or improvements necessary to comply with the terms of any final order or judgment. Notwithstanding the foregoing, Tenant, not Landlord, shall be responsible for the correction of any violations that arise out of or in connection with any claims brought under any provision of the Americans with Disabilities Act other than Title III (compliance with Title III of the Americans with Disabilities Act shall be Landlord's responsibility pursuant to this Section 1 above regarding Landlord's

obligation to construct the Expansion Space Improvements in accordance with applicable Federal, City and State laws), the specific nature of Tenant's business in the Expansion Space (other than general office use), the acts or omissions of Tenant, its agents, employees or contractors, Tenant's arrangement of any furniture, equipment or other property in the Expansion Space, any repairs, alterations, additions or improvements performed by or on behalf of Tenant (other than the Expansion Space Improvements) and any design or configuration of the Expansion Space specifically requested by Tenant after being informed that such design or configuration may not be in strict compliance with laws.

2. If Tenant shall request any revisions to the Plans, Landlord shall have such revisions prepared at Tenant's sole cost and expense and Tenant shall reimburse Landlord for the cost of preparing any such revisions to the Plans, plus any applicable state sales or use tax thereon, upon demand. Promptly upon completion of the revisions, Landlord shall notify Tenant in writing of the increased cost in the Expansion Space Improvements, if any, resulting from such revisions to the Plans. Tenant, within one business day, shall notify Landlord in writing whether it desires to proceed with such revisions. In the absence of such written authorization, Landlord shall have the option to continue work on the Expansion Space disregarding the requested revision. Tenant shall be responsible for any delay caused by Tenant in completion of the Expansion Space resulting from any revision to the Plans. If such revisions result in an increase in the cost of Expansion Space Improvements, such increased costs, plus any applicable state sales or use tax thereon, shall be payable by Tenant upon demand. Notwithstanding anything herein to the contrary, all revisions to the Plans shall be subject to the approval of Landlord.

3. In addition the Expansion Space Improvements, Landlord shall perform base Building system restoration and repairs in the Expansion Space required of Landlord pursuant to Section 9 of this Amendment.

4. This **Exhibit B** shall not be deemed applicable to any additional space added to the Expansion Space at any time or from time to time, whether by any options under the Lease, as amended hereby, or otherwise, or to any portion of the Premises or any additions to the Premises in the event of a renewal or extension of the Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease, as amended hereby.

QuickLinks

Exhibit 10.2

STANDARD INDUSTRIAL LEASE

(Multiple Tenant—Tenant Pays its Percentage Share of Operating Expenses,
Real Property Taxes and Insurance Costs—NO Base Year)

1. BASIC LEASE PROVISIONS.

1.1	**DATE:**	June 30, 2005
1.2	**LANDLORD:**	The Realty Associates Fund III, L.P., a Delaware limited partnership
1.3	**TENANT:**	Accuray Incorporated, a California corporation
1.4	**PREMISES ADDRESSES:**	1306-1310 Orleans Drive, Sunnyvale, California
1.5	**APPROXIMATE LEASABLE AREA OF PREMISES: (in square feet)**	50,000
1.6	**USE:**	Manufacturing, assembly, research and development and general office purposes
1.7	**TERM:**	Commencement Date through the date that is six (6) years after the Rent Commencement Date (the "Initial Term")
1.8	**COMMENCEMENT DATE:**	July 1, 2005
	RENT COMMENCEMENT DATE:	The first to occur of (a) substantial completion of the Tenant Improvements (as defined in the Work Letter Agreement), (b) Lessee's occupancy of the Premises for the purpose of operating its business (as opposed to constructing the Tenant Improvements), or (c) January 1, 2006.
1.9	**MONTHLY BASE RENT:**	Prior to Rent Commencement Date: $0; Rent Commencement Date through 12th full calendar month: $42,500.00; 13th month through 24th month: $44,000.00; 25th month through 36th month: $45,500.00; 37th month through 48th month: $47,000.00; 49th month through 60th month: $48,500.00; and 61st month through 72nd month $50,000.00.
1.10	**BASE RENT PAID UPON EXECUTION:**	$42,500.00

	APPLIED TO: **(insert month(s))**	First full month of term of Lease
1.11	**TENANT'S PERCENTAGE SHARE:**	See section 6.4
1.12	**SECURITY DEPOSIT:**	$50,000.00
1.13	**NUMBER OF PARKING SPACES:**	151
1.14	**REAL ESTATE BROKER:**	
	LANDLORD:	CB Richard Ellis, Inc.
	TENANT:	Wayne Mascia and Associates
1.15	**EXHIBITS ATTACHED TO LEASE:**	Exhibit A—"Premises;" Exhibit B—Intentionally deleted; Exhibit C—"Rules and Regulations;" Exhibit D—"Form of HazMat Certificate"; Exhibit E—"Work Letter Agreement"; Exhibit F—"Addendum to Lease"
1.16	**ADDRESSES FOR NOTICES:**	
	LANDLORD:	The Realty Associates Fund III, L.P. c/o TA Associates Realty 1301 Dove Street, Suite 860 Newport Beach, California 92660 Attn: Asset Manager/Orleans
	WITH A COPY TO:	CB Richard Ellis, Inc. 225 West Santa Clara Street, Suite 1050 San Jose, California 95113 Attention: Property Manager/Orleans
	TENANT:	Accuray Incorporated 1310 Chesapeake Terrace Sunnyvale, California 94089 Attention: Chief Operating Officer

2. Premises.

2.1 *ACCEPTANCE.* Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, to have and to hold for the term of this Lease, subject to the terms, covenants and conditions of this Lease. The Premises is depicted on Exhibit "A" attached hereto. The Premises depicted on Exhibit "A" is all or a part of a building (the "*Building*") and may contain areas outside of the Building to the extent such areas are specifically identified on Exhibit "A" as being a part of the Premises. The number of square feet set forth in section 1.5 is an approximation, and the Base Rent shall not be changed if the actual number of square feet in the Premises is different than the number of square feet set forth in section 1.5.

2.2 *CONDITION.*

(a) Except as otherwise expressly provided in this Lease, Tenant accepts the Premises in its condition on the date Landlord delivers possession of the Premises to Tenant (the "*Delivery Date*"), subject to all applicable laws, ordinances, regulations, covenants, conditions, restrictions and easements, and except as may be otherwise expressly provided

in this Lease, Landlord shall not be obligated to make any repairs or alterations to the Premises.

(b) Landlord represents and warrants to Tenant that on the Delivery Date the following parts of the Premises shall be in good working order: (a) plumbing systems, (b) electrical systems, (c) the roof, (d) all HVAC units, (e) mechanical systems and (f) lighting systems (collectively, the "*Building Systems*").

(c) Landlord warrants that on the Delivery Date the Building will comply with the requirements of the Americans With Disabilities Act and Title 24 of the California Code of Regulation (collectively, "*ADA Requirements*") that are in effect as of the Delivery Date. In determining whether or not the Building complies with the ADA Requirements in effect on the Delivery Date, Landlord and Tenant shall assume that Tenant will occupy the Premises in its "as is" condition and without respect to any modification of the Premises to be made by Tenant (e.g., prior to the construction of the Tenant Improvements (as defined in the Work Letter Agreement) and prior to the construction of any Alterations (as defined below)).

(d) In the event that it is determined that a warranty set forth in (b) or (c) above is untrue, Landlord shall not be in default under the Lease if after Landlord receives written notice of the representation or warranty that is untrue, Landlord promptly takes the actions, at Landlord's sole expense, necessary to put the applicable Building System in working order or to comply with the applicable ADA Requirement. The representations and warranties set forth in (b) and (c) above shall apply only to the condition of the Building Systems and compliance with the ADA Requirements as of the Delivery Date, and shall not apply to any point in time thereafter. Tenant shall notify Landlord in writing (the "*Warranty Notice*") within ninety (90) days after the Rent Commencement Date with respect to all ADA Requirements and Building Systems except the roof, and within one hundred eighty (180) days after the Rent Commencement Date with respect to the roof, time being of the essence (a "*Notice Date*"), of each way, if any, that the foregoing representations and warranties ware untrue on the Delivery Date (an "*Untrue Warranty*"). A Warranty Notice shall state the specific way in which one or more Building System was not in working order on the Delivery Date or in which the Building did not comply with ADA Requirements on the Delivery Date. Subject to Landlord's obligations under section 11, Landlord shall have no responsibility to repair any Building System or to comply with any ADA Requirement unless Tenant notifies Landlord on or before the applicable Notice Date in a Warranty Notice of the Untrue Warranty, and if Tenant notifies Landlord that a Building System was not in working order or that the Building did not comply with an ADA Requirement after the applicable Notice Date, Landlord shall have no obligation pursuant to this section to repair the Building System that is not in working order or to comply with the ADA Requirement.

2.3 *COMMON AREAS.* Landlord hereby grants to Tenant for the benefit of Tenant and its employees, suppliers, shippers, customers and invitees during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use (including Landlord), the Common Areas (as hereinafter defined) as they exist from time to time, subject to all rights reserved by Landlord hereunder and under the terms of all rules and regulations promulgated by Landlord from time to time with respect thereto. Landlord reserves the right from time to time to (a) make changes in the Common Areas, including, without limitation, changes in location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways; (b) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remain available; (c) construct additional buildings,

parking areas, loading dock facilities and other improvements within the Common Areas; and (d) do and perform such other acts and make such other changes in, to or with respect to the Common Areas as Landlord may deem appropriate; *provided*, *however*, any such permanent changes or alterations that substantially and adversely affect parking, loading or unloading or substantially and adversely interfere with Tenant's use of the Premises or the Common Areas (as defined below) shall require Tenant's prior written consent, which consent shall not be unreasonably withheld or delayed. As used herein, the term "*Common Areas*" means all areas and facilities outside the Premises and within the exterior boundary lines of the land owned by Landlord that are provided and designated by Landlord as such from time to time for general nonexclusive use of Tenant and others, including, if designated by Landlord as Common Areas, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways and landscaped areas. The Premises, the Building, the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "*Project*." Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, including, without limitation, the storage of trucks or other vehicles. Any such storage shall be permitted only by the prior written consent of Landlord, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

3. TERM.

3.1 *TERM AND COMMENCEMENT.* The term and Commencement Date of this Lease are as specified in sections 1.7 and 1.8.

3.2 *TENDER OF POSSESSION.* Possession of the Premises shall be deemed tendered to Tenant when Landlord has offered Tenant possession of the Premises.

4. USE.

4.1 *PERMITTED USE.* The Premises shall be used only for the purpose described in section 1.6 and for no other purpose. Landlord makes no representation or warranty that Tenant's use is permitted by applicable zoning laws or other laws and regulations. In no event shall any portion of the Premises be used for retail sales. Tenant shall not initiate, submit an application for, or otherwise request, any land use approvals or entitlements with respect to the Premises or any other portion of the Project, including, without limitation, any variance, conditional use permit or rezoning, without first obtaining Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. Tenant shall not (a) permit any animals or pets to be brought to or kept in the Premises, (b) install any antenna, dish or other device on the roof of the Building or outside of the Premises, (c) make any penetrations into the roof of the Building, (d) place loads upon floors, walls or ceilings in excess of the load such items were designed to carry, (e) place or store, nor permit any other person or entity to place or store, any property, equipment, material, supplies or other items outside of the Building in which the Premises is located or (f) change the exterior of the Premises or the Building in which the Premises is located. Tenant acknowledges that Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes.

4.2 *COMPLIANCE WITH LAWS.* Tenant shall, at Tenant's sole expense, promptly comply with all applicable laws, ordinances, rules, regulations, orders, certificates of occupancy, conditional use or other permits, variances, covenants, conditions, restrictions, easements, the reasonable

recommendations of Landlord's engineers or other consultants, and requirements of any fire insurance underwriters, rating bureaus or government agencies, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the term or any part of the term hereof, relating in any manner to the Premises or the occupation and use by Tenant of the Premises ("*Legal Requirements*"). Tenant shall, at Tenant's sole expense, comply with all requirements of the Americans With Disabilities Act that relate to the Premises, and all federal, state and local laws and regulations governing occupational safely and health. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other tenants of the Project. Tenant shall obtain, at its sole expense, any permit or other governmental authorization required to operate its business from the Premises. Landlord shall not be liable for the failure of any other tenant or person to abide by the requirements of this section or to otherwise comply with applicable laws and regulations, and Tenant shall not be excused from the performance of its obligations under this Lease due to such a failure. Notwithstanding the foregoing, in no event shall Tenant be required to make changes required by Legal Requirements to the structural components of the Premises ("*Landlord Changes*"), unless such changes are required due to Tenant's negligence or misuse of the Premises, Tenant's alteration of the Premises or Tenant's particular use of the Premises. If the changes are required due to Tenant's negligence or misuse of the Premises, Tenant's alteration of the Premises or Tenant's particular use of the Premises, Landlord shall make such changes and Tenant shall reimburse Landlord for the reasonable cost thereof. With respect to other Landlord Changes, Landlord shall cause same to be completed, and subject to the other limitations contained in this Lease, the cost thereof may be included in Operating Expenses.

4.3 *LANDLORD REPRESENTATION.* As of the date set forth in section 1.1, Landlord represents and warrants to Tenant that to Landlord's actual knowledge it does not know of any material violations of laws or regulations applicable to the Premises that would materially and adversely affect Tenant's use of the Premises. Landlord's representation shall not apply to alterations or improvements to be made by Tenant to the Premises or the use for which Tenant will occupy the Premises. For purposes of this section, Landlord's actual knowledge shall mean the actual knowledge of Scott Amling without duty of investigation. Tenant acknowledges that the improvements comprising the Premises may have been constructed prior to the enactment of some existing laws and regulations and may have been constructed without building permits and the fact that such improvements do not now comply with some existing laws and regulations shall not constitute the breach of this warranty or obligate Landlord to modify such improvements.

5. *BASE RENT.* Tenant shall pay Base Rent in the amount set forth on the first page of this Lease. The first month's Base Rent, the Security Deposit, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date this Lease is executed by Tenant, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Rent Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder shall be payable at such address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant shall have no right at any time to abate, reduce, or set off any rent due hereunder except where expressly provided in this Lease.

6. OPERATING EXPENSE PAYMENTS

6.1 *OPERATING EXPENSES.* Tenant shall pay Tenant's Percentage Share (as defined below) of the Operating Expenses for the Project. For the purposes of this Lease, and subject to the exclusions described in section 6.2, the term "*Operating Expenses*" shall mean all expenses and disbursements of every kind (subject to the limitations set forth below) which Landlord incurs, pays or becomes obligated to pay in connection with the ownership, operation, and maintenance of the Project (including the associated Common Areas), including, but not limited to, the following:

(a) wages and salaries (including management fees) of all employees, agents, consultants and other individuals or entities engaged in the operation, repair, replacement, maintenance, and security of the Project, including taxes, insurance and benefits relating thereto;

(b) all supplies and materials used in the operation, maintenance, repair, replacement, and security of the Project;

(c) annual cost of all Capital improvements (as defined below) made to the Project which although capital in nature can reasonably be expected to reduce the normal operating costs of the Project, as well as all Capital improvements made in order to comply with any law now or hereafter promulgated by any governmental authority, as amortized over the useful economic life of such improvements as determined by Landlord in its reasonable discretion (without regard to the period over which such improvements may be depreciated or amortized for federal income tax purposes). Capital improvements shall not include any expenditure incurred by Landlord to maintain the structural elements of the roof of the Building (excluding the roof membrane), the structural soundness of the foundation of the Building, the structural elements of the exterior walls of the Building and the structural elements of existing interior load-bearing walls of the Building (excluding any load-bearing walls constructed by Tenant, which Tenant shall maintain and repair at Tenant's sole expense), and the cost of such items shall be paid by Landlord, at Landlord's sole cost and expense;

(d) cost of all utilities paid by Landlord;

(e) cost of any insurance or insurance-related expense applicable to the Project and Landlord's personal property used in connection therewith, including, but not limited to, the insurance costs described in section 10.2;

(f) cost of repairs, replacements and general maintenance of the Project (including all truck court areas, paving and parking areas, Common Area lighting facilities, fences, gates, water lines, sewer lines, rail spur areas and any other item Landlord is obligated to repair or maintain), other than costs necessary to assure the structural soundness of the roof, foundation and exterior walls of the Project which are payable solely by Landlord under section 11;

(g) cost of service or maintenance contracts with independent contractors for the operation, maintenance, repair, replacement or security of the Project (including, without limitation, alarm service, exterior painting, trash collection, snow, ice, debris and waste removal and landscape maintenance);

(h) the cost of all accounting fees, management fees, legal fees and consulting fees attributable to the operation, ownership, management, maintenance or repair of the Project;

(i) payments made by Landlord under any easement, license, operating agreement, declaration, restrictive covenant or other agreement relating to the sharing of costs among property owners;

(j) the cost of all business licenses, permits or similar fees relating to the operation, ownership, repair or maintenance of the Project; and

(k) the cost of any other item the cost of which is stated in this Lease to be an Operating Expense.

For purposes of this Lease, a "*Capital Improvement*" shall be an improvement to the Project that Landlord is obligated or permitted to make pursuant to this Lease, the cost of which is not fully deductible in the year incurred in accordance with generally accepted accounting principles; *provided*, *however*, that, at Landlord's option, the following items shall be treated as expenses and not Capital Improvements: (i) the cost of painting all or part of the Project, (ii) the cost of resurfacing and restriping roadways and parking areas and (iii) the cost of any items Tenant is obligated to pay for pursuant to section 12.1 that Landlord elects, in its sole discretion, to include in Operating Expenses. Real Property Taxes (as defined below) shall be reimbursed to Landlord as provided below and shall not be treated as an Operating Expense. References to facilities, services, utilities or other items in this section shall not impose an obligation on Landlord to have said facilities or to provide said services unless such facilities and services already exist at the Project.

6.2 *OPERATING EXPENSE EXCLUSIONS.* Notwithstanding anything to the contrary contained herein, for purposes of this Lease, the term "Operating Expenses" shall not include the following: (i) costs (including permit license and inspection fees) incurred for tenant improvement for other tenants within the Project; (ii) legal and auditing fees (other than those fees reasonably incurred in connection with the maintenance and operation of all or any portion of the Project), leasing commissions, advertising expenses and similar costs incurred in connection with the leasing of the Project; (iii) depreciation of the Building or any other improvements situated within the Project; (iv) any items for which Landlord is actually reimbursed by insurance or by direct reimbursement by any other tenant of the Project; (v) costs of repairs or other work necessitated by fire, windstorm or other casualty (excluding any deductible) and/or costs of repairs or other work necessitated by the exercise of the right of eminent domain to the extent insurance proceeds or a condemnation award, as applicable, is actually received by Landlord for such purposes; *provided*, such costs of repairs or other work shall be paid by the parties in accordance with the provisions of sections 11 and 12, below; (vi) other than any interest charges for Capital Improvements referred to in section 6.1(c) hereinabove, any interest or payments on any financing for the Building or the Project and interest and penalties incurred as a result of Landlord's late payment of any invoice; (vii) costs associated with the investigation and/or remediation of Hazardous Materials (hereafter defined) present in, on or about any portion of the Project, unless such costs and expenses are the responsibility of Tenant as provided in section 27 hereof, in which event such costs and expenses shall be paid solely by Tenant in accordance with the provisions of section 27 hereof; (viii) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Project to the extent the same exceeds the costs of such by unaffiliated third parties on a competitive basis; (ix) any payments under a ground lease or master lease; and (x) except as provided in section 6.1(c) and (j) above, the cost of Capital Improvements.

6.3 *PAYMENT.* Tenant's Percentage Share of Operating Expenses shall be payable by Tenant within thirty (30) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord. At Landlord's option, however, Landlord may, from time to time, estimate what Tenant's Percentage Share of Operating Expenses will be, and the same shall be

payable by Tenant monthly during each calendar year of the Lease term, on the same day as the Base Rent is due hereunder. In the event that Tenant pays Landlord's estimate of Tenant's Percentage Share of Operating Expenses, Landlord shall use its best efforts to deliver to Tenant within one hundred eighty (180) days after the expiration of each calendar year a reasonably detailed statement (the "*Statement*") showing Tenant's Percentage Share of the actual Operating Expenses incurred during such year. If Landlord has not delivered a Statement to Tenant within one hundred fifty (150) days after the expiration of the preceding calendar year, Tenant shall have the right to give Landlord written notice of such failure (a "*Tenant Notice*"), and Landlord's failure to provide the Statement to Tenant within thirty (30) days after Landlord receives the Tenant Notice shall be a breach by Landlord of its obligations under this Lease. To be effective, the Tenant Notice must specifically state that Landlord's failure to provide the Statement to Tenant within thirty (30) days after Landlord's receipt of the Notice will constitute a breach of the Lease by Landlord and the Tenant Notice must refer specifically to this section of the Lease. Landlord's failure to deliver the Statement to Tenant within said period shall not constitute Landlord's waiver of its right to collect said amounts or otherwise prejudice Landlord's rights hereunder. If Tenant's payments under this section during said calendar year exceed Tenant's Percentage Share as indicated on the Statement, Tenant shall be entitled to credit the amount of such overpayment against Base Rent and Tenant's Percentage Share of Operating Expenses next falling due. If Tenant's payments under this section during said calendar year were less than Tenant's Percentage Share as indicated on the Statement, Tenant shall pay to Landlord the amount of the deficiency within thirty (30) days after delivery by Landlord to Tenant of the Statement. Landlord and Tenant shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last calendar year for which Tenant is responsible for Operating Expenses, notwithstanding that the Lease term may have terminated before the end of such calendar year; and this provision shall survive the expiration or earlier termination of the Lease.

6.4 *TENANT'S PERCENTAGE SHARE.* "Tenant's Percentage Share" as used in this Lease shall mean the percentage of the cost of Opening Expenses and Real Property Taxes (as defined below) for which Tenant is obligated to reimburse Landlord pursuant to the Lease. Notwithstanding anything to the contrary contained in section 1.11, Landlord shall have the right lo determine Tenant's Percentage Share of the cost of Operating Expenses and Real Property Taxes using any one or more of the following three methods, and Tenant hereby agrees that any one of the following three methods of allocation is reasonable: (a) by multiplying the cost of all Operating Expenses or Real Properties by a fraction, the numerator of which is the number of square feet of leasable space in the Premises and the denominator of which is the number of square feet of leasable space in all buildings in the Project; or (b) (i) with respect to an Operating Expense or Real Property Taxes attributable solely to the Building, requiring Tenant to pay that portion of the cost of the Operating Expense or Real Property Taxes that is obtained by multiplying such cost by a fraction, the numerator of which is the number of square feet of leasable space in the Premises and the denominator of which is the number of square feet of leasable space in the entire Building and (ii) with respect to an Operating Expense or Real Property Taxes attributable to the Common Areas of the Project, but no any particular building in the Project, requiring Tenant to pay that portion of the cost of the Operating Expense or Real Property Taxes that is obtained by multiplying such cost by a fraction, the numerator of which is the number of square feet of leasable space in the Premises and the denominator of which is the number of square feet of leasable space in all buildings in the Project or (c) by allocating an Operating Expense or Real Property Taxes in any other reasonable manner, as determined by Landlord. Landlord shall apply the various

Tenant Percentage Shares to Operating Expenses and Real Property Taxes in a commercially reasonable and good faith manner.

6.5 *AUDITS.* If Tenant disputes the amount set forth in the Statement, Tenant shall have the right, at Tenant's sole expense, not later the sixty (60) days following receipt of such Statement, to review Landlord's books and records with respect to the calendar year which is the subject of the Statement. In addition, if Tenant disputes the amount set forth in the Statement, Tenant shall have the right, at Tenant's sole expense, not later than ninety (90) days following receipt of such Statement, to cause Landlord's books and records with respect to the calendar year which is the subject of the Statement to be audited by a certified public accountant mutually acceptable to Landlord and Tenant. The audit shall take place at the offices of Landlord where its books and records are located at a mutually convenient time during Landlord's regular business hours. If the audit is performed by a mutually acceptable certified public accountant, Tenant's Percentage Share of Operating Expenses shall be appropriately adjusted based upon the results of such audit, and the results of such audit shall be final and binding upon Landlord and Tenant. Tenant shall have no right to conduct an audit or to give Landlord notice that it desires to conduct an audit at any time Tenant is in default under the Lease. The accountant conducting the audit shall be compensated on an hourly basis and shall not be compensated based upon a percentage of overcharges it discovers. No subtenant shall have any right to conduct an audit, and no assignee shall conduct an audit for any period during which such assignee was not in possession of the Premises. Tenant's right to undertake an audit with respect to any calendar year shall expire ninety (90) days after Tenant's receipt of the Statement for such calendar year, and such Statement shall be final and binding upon Tenant and shall, as between the parties, be conclusively deemed correct, at the end of such ninety (90) day period, unless prior thereto Tenant shall have given Landlord written notice of its intention to audit Operating Expenses for the calendar year which is the subject of the Statement. If Tenant gives Landlord notice of its intention to audit Operating Expenses, it must commence such audit within sixty (60) days after such notice is delivered to Landlord, and the audit must be completed within one hundred twenty (120) days after such notice is delivered to Landlord. If Tenant does not commence and complete the audit within such periods, the Statement which Tenant elected to audit shall be deemed final and binding upon Tenant and shall, as between the parties, be conclusively deemed correct. Tenant agrees that the results of any Operating Expense audit shall be kept strictly confidential by Tenant and shall not be disclosed to any other person or entity. If as a result of an audit, it is determined that Landlord has overstated the Operating Expenses owed by Tenant on a Statement by more than ten percent (10%) of the actual Operating Expenses owed by Tenant, Landlord shall reimburse Tenant for the reasonable out-of-pocket costs Tenant paid to unrelated third parties for the performance of the audit; *provided*, *however*, Landlord shall not be obligated to reimburse Tenant for more than One Thousand Five Hundred Dollars($1,500) of expenses with respect to any one audit.

6.6 *AMORTIZATION OF CERTAIN IMPROVEMENTS.* Pursuant to sections 6.1 and 12 of this Lease, Landlord has the right to require Tenant to pay for certain costs related to the replacement of the roof membrane and HVAC units at the Building and the resurfacing of the asphalt and concrete driveways and parking areas of the Project (collectively, the "*Major Items*"). Notwithstanding anything to the contrary contained in sections 6.1 and 12, if Landlord replaces a Major Item, and in accordance with GAAP, the entire cost of the replacement is not deductible as an expense in the year incurred, Landlord shall amortize the cost of the replacement of the Major Item over its useful life, as reasonably determined by Landlord, and Tenant shall only be obligated to reimburse Landlord each year for its Percentage Share of such amortized cost. Landlord shall have no obligation to amortize repairs or maintenance items (as opposed to replacement costs) relating to the Major Items, and all repair and

maintenance items shall be payable by Tenant to Landlord as Operating Expense in the year incurred.

7. *SECURITY DEPOSIT.* Tenant shall deliver to Landlord at the time it executes this Lease the security deposit set forth in section 1.12 as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay Base Rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use all or any portion of said deposit for the payment of any Base Rent or other charge due hereunder, to pay any other sum to which Landlord may become obligated by reason of Tenant default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to its full amount. Landlord shall not be required to keep said security deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, said deposit, or so much thereof as has not heretofore been applied by Landlord, shall be returned, without payment of interest or other amount for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) at the expiration of the term hereof, and after Tenant has vacated the Premises. No trust relationship is created herein between Landlord and Tenant with respect to said security deposit. Tenant acknowledges that the security deposit is not an advance payment of any kind or a measure of Landlord's damages in the event of Tenant's default. Tenant hereby waives the provisions of any law which is inconsistent with this section.

8. UTILITIES.

8.1 *PAYMENT.* Tenant shall pay for all water, gas, electricity, telephone, sewer, sprinkler services, refuse and trash collection and other utilities and services used on the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto. Tenant shall contract directly with the applicable public utility for such service. Tenant shall pay its share of all charges for jointly-metered utilities based upon consumption, as reasonably determined by Landlord. Tenant agrees to limit use of water and sewer for normal restroom use, and nothing herein contained shall impose upon Landlord any duty to provide sewer or water usage for other than normal restroom usage.

8.2 *INTERRUPTIONS.* Subject to Tenant's rights under section 8.5 below, Tenant agrees that Landlord shall not be liable to Tenant for its failure to furnish water, gas, electricity, telephone, sewer, refuse and trash collection or any other utility services or building services when such failure is occasioned, in whole or in part by repairs, replacements or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, telephone service or other utility at the Project, by any accident, casualty or event arising from any cause whatsoever, by act, negligence or default of Tenant or any other person or entity, or by any other cause, and such failures shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from the obligation of paying rent or performing any of its obligations under this Lease; *provided*, *however*, the foregoing shall not release Landlord from liability arising out of the negligence or willful misconduct of Landlord and Landlord's agents. Furthermore, subject to Tenant's rights under section 8.5 below, Landlord shall not be liable under any circumstances for loss of property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any such services or utilities. Landlord may comply with voluntary controls or guidelines promulgated by any governmental entity relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions without creating any liability of Landlord to Tenant under this Lease.

8.3 *RAILROAD SPURS.* If the Premises is served by railroad spur, Tenant shall execute any agreement required by the railroad company serving the railroad spur, and such agreement shall be satisfactory to Landlord, in Landlord's sole discretion. Tenant shall pay the cost of maintaining the railroad spur, at Tenant's sole cost and expanse.

8.4 *ALTERNATIVE UTILITY PROVIDERS.* If permitted by applicable laws, Landlord shall have the right at any time and from time to time during the term of this Lease to either contract for service from a different company or companies (each such company referred to as an "*Alternate Service Provider*") other than the company or companies presently providing electrical service for the Project (the "*Electric Service Provider*") or continue to contract for service from the Electric Service Provider, at Landlord's sole discretion. Tenant agrees to cooperate with Landlord, the Electric Service Provider, and an Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, the Electric Service Provider, and any Alternate Service Provider reasonable access to the Building's electric lines, feeders, risers, wiring and any other machinery within the Premises.

8.5 *ABATEMENT OF RENT.* In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof for two (2) consecutive business days (the "*Eligibility Period*") as a result of any damage or destruction to the Premises or any repair, maintenance or alteration performed by Landlord to the Premises after the Commencement Date and required by the Lease, which substantially interferes with Tenant's use of the Premises, or any failure to provide services or access to the Premises due to Landlord's negligence or default, then Tenant's rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the rent for the entire Premises shall be abated; *provided*, *however*, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence.

9. REAL AND PERSONAL PROPERTY TAXES.

9.1 *PAYMENT OF TAXES.* Tenant shall pay to Landlord during the term of this Lease, in addition to Base Rent and Tenant's Percentage Share of Operating Expenses, Tenant's Percentage Share of all Real Property Taxes. Tenant's Percentage Share of Real Property Taxes shall be payable by Tenant at the same time, in the same manner and under the same terms and conditions as Tenant pays Tenant's Percentage Share of Operating Expenses.

9.2 *DEFINITION OF REAL PROPERTY TAX.* As used herein, the term "*Real Property Taxes*" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, improvement bond or bonds imposed on the Project or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Project or in any portion thereof. Real Property Taxes shall not include income, inheritance

and gift taxes. In the future a general or special assessment of real property taxes may be levied and assessed against the Project, and in this event Landlord may have the right to either elect to pay the new assessment in full or to pay the new assessment in installments over time. If Landlord elects to pay the new assessment in full, each year the Real Property Taxes shall include the amount of the assessment that would have come due each year if Landlord had elected to pay the assessment in installments.

9.3 *PERSONAL PROPERTY TAXES.* Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or related to Tenant's use of the Premises. If any of Tenant's personal property shall be assessed with Landlord's real or personal property, Tenant shall pay to Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement from Landlord setting forth the taxes applicable to Tenant's property.

9.4 *REASSESSMENTS.* From time to time Landlord may challenge the assessed value of the Project as determined by applicable taxing authorities and/or Landlord may attempt to cause the Real Property Taxes to be reduced on other grounds. If Landlord is successful in causing the Real Property Taxes to be reduced or in obtaining a refund, rebate, credit or similar benefit (hereinafter collectively referred to as a "reduction"), Landlord shall to the extent practicable, credit the reduction(s) to Real Property Taxes for the calendar year to which a reduction applies and recalculate the Real Property Taxes owed by Tenant for years in which the reduction applies based on the reduced Real Property Taxes. All costs incurred by Landlord in obtaining the Real Property Tax reductions shall be considered an Operating Expense, and Landlord shall determine, in its sole discretion, to which years any reductions will be applied. In addition, all accounting and related costs incurred by Landlord in making the adjustments shall be an Operating Expense. Landlord shall have the right to compensate a person or entity it employs to obtain a reduction in Real Property Taxes by giving such person or entity a percentage of any reduction or credit obtained, and in this event the reduction or credit obtained by Landlord shall be deemed to be the reduction or credit given by the taxing authority less the compensation paid to such person or entity.

10. INSURANCE.

10.1 *INSURANCE—TENANT.*

(a) Tenant shall obtain and keep in force during the term of this Lease a commercial general liability policy of insurance with coverages acceptable to Landlord, in Landlord's reasonable discretion, which, by way of example and not limitation, protects Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single-limit coverage in an amount not less than $2,000,000 per occurrence with an "Additional Insured-Managers and Landlords of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease.

(b) Tenant shall obtain and keep in force during the term of this Lease "all-risk" extended coverage property insurance. Said insurance shall be written on a one hundred percent (100%) replacement cost basis on Tenant's personal property, all tenant improvements installed at the Premises by Landlord or Tenant, Tenant's trade fixtures and other

property. By way of example, and not limitation, such policies shall provide protection against any peril included within the classification "fire and extended coverage," against vandalism and malicious mischief, theft, sprinkler leakage, earthquake damage and flood damage.

(c) Tenant shall, at all times during the term hereof, maintain in effect workers' compensation insurance as required by applicable law and business interruption and extra expense insurance satisfactory to Landlord.

10.2 *INSURANCE—LANDLORD.*

(a) Landlord shall obtain and keep in force a policy of general liability insurance with coverage against such risks and in such amounts as Landlord deems advisable insuring Landlord against liability arising out of the ownership, operation and management of the Project.

(b) Landlord shall also obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Project in the amount of not less than eighty percent (80%) of the full replacement cost thereof, as determined by Landlord from time to time. The terms and conditions of said policies and the perils and risks covered thereby shall be determined by Landlord, from time to time, in Landlord's sole discretion; *provided* that such policy shall, at a minimum, provide protection against any peril included within the classification "fire and extended coverage," vandalism and malicious mischief, theft and sprinkler leakage. In addition, at Landlord's option, Landlord shall obtain and keep in force, during the term of this Lease, a policy of rental interruption insurance, with loss payable to Landlord, which insurance shall, at Landlord's option, also cover all Operating Expenses and Real Property Taxes. Tenant will not be named as an additional insured in any insurance policies carried by Landlord and shall have no right to any proceeds therefrom. The policies purchased by Landlord shall contain such deductibles as Landlord may determine. Tenant shall pay at Tenant's sole expense any increase in the property insurance premiums for the Project over what was payable immediately prior to the increase to the extent the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

10.3 *INSURANCE POLICIES.* Tenant shall deliver to Landlord certificates of the insurance policies required under section 10.1 within fifteen (15) days prior to the Commencement Date of this Lease, and Landlord shall have the right to approve the terms and conditions of said certificates. Tenant's insurance policies shall not be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord. Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with certificates of renewals thereof. Tenant's insurance policies shall be issued by insurance companies authorized to do business in the state in which the Project is located, and said companies shall maintain during the policy term a "General Policyholder's Rating" of at least A and a financial rating of at least "Class X" (or such other rating as may be required by any lender having a lien on the Project) as set forth in the most recent edition of "Best Insurance Reports." All insurance obtained by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. Landlord and, at Landlord's option, the holder of any mortgage or deed of trust encumbering the Project and any person or entity managing the Project on behalf of Landlord, shall be named as an additional insured on all insurance policies Tenant is obligated to obtain by section 10.1 above. Tenant's insurance policies shall not include deductibles in excess of Five Thousand Dollars ($5,000); *provided*, *however*, if deductibles in this amount are

not available at commercially reasonable rates and it becomes customary to permit tenants of similar industrial buildings to maintain a higher deductible, Landlord shall permit Tenant to maintain the higher customary deductible not to exceed One Hundred Thousand Dollars ($25,000).

10.4 *WAIVER OF SUBROGATION.* Landlord waives any and all rights of recovery against Tenant and Tenant's employees and agents for or arising out of damage to, or destruction of, the Project to the extent that Landlord's insurance policies then in force insure against such damage or destruction (or to the extent of what would have been covered had Landlord maintained the insurance required to be carried under this Lease) and permit such waiver. Tenant waives any and all rights of recovery against Landlord and Landlord's employees and agents for or arising out of damage to, or destruction of, the Project to the extent that Tenant's insurance policies then in force insure against such damage or destruction (or to the extent of what would have been covered had Tenant maintained the insurance required to be carried under this Lease) and permit such waiver. Tenant shall cause the insurance policies it obtains in accordance with section 10.1 relating to property damage to provide that the insurance company waives all right of recovery by subrogation against Landlord in connection with any liability or damage covered by Tenant's insurance policies.

10.5 *COVERAGE.* Landlord makes no representation to Tenant that the limits or forms of coverage specified above or approved by Landlord are adequate to insure Tenant's property or Tenant's obligations under this Lease, and the limits of any insurance carried by Tenant shall not limit Tenant's obligations or liability under any indemnity provision included in this Lease or under any other provision of this Lease.

11. LANDLORD'S REPAIRS.

11.1 *OBLIGATIONS OF LANDLORD.* Landlord shall maintain, at Landlord's expense, only the structural elements of the roof of the Building (excluding the roof membrane), the structural soundness of the foundation of the Building and the structural elements of the exterior walls of the Building. Tenant shall reimburse Landlord for the cost of any maintenance, repair or replacement of the foregoing necessitated by Tenant's misuse, negligence, alterations to the Premises or any breach of its obligations under this Lease. By way of example, and not limitation, the term "exterior walls" as used in this section shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levelers, or office entries. Tenant shall immediately give Landlord written notice of any repair required by Landlord pursuant to this section, after which Landlord shall have a reasonable time in which to complete the repair. Nothing contained in this section shall be construed to obligate Landlord to seal or otherwise maintain the surface of any foundation, floor or slab. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

11.2 *FAILURE OF LANDLORD TO MAKE REPAIR.* Notwithstanding anything to the contrary contained in the Lease, if Tenant provides written notice to Landlord that an event or circumstance has occurred which requires Landlord to complete a repair at the Premises, and Landlord fails to begin taking the actions necessary to complete such repair within thirty (30) days after the receipt of such notice and to thereafter diligently proceed to complete such repair, then, Tenant shall have the right to give to Landlord a second written notice (the "*Second Notice*"). The Second Notice shall (a) describe the repair Landlord is obligated to complete and (b) state that Landlord's failure to begin taking the actions necessary to complete such repair within ten (10) days after Landlord's receipt of the Second Notice shall entitle Tenant to make the repair pursuant to this Section of the Lease. If Landlord does not

begin taking the actions necessary to complete such repair within ten (10) days after the receipt of the Second Notice, subject to the terms and conditions set forth below, Tenant may proceed to make the repair, and if such repair was required under the terms of the Lease to be made by Landlord, then Tenant shall be entitled to reimbursement by Landlord of Tenant's reasonable costs and expenses in making such repair. If Landlord was obligated to perform such repair, Landlord shall reimburse Tenant for the reasonable cost of the repair within thirty (30) days after receiving reasonable evidence of the repair made, its cost and mechanics' lien releases from all contractors making the repair. If Tenant makes a repair, and such repair will affect the Building's life/safety system, HVAC system, elevator system, electrical system, plumbing system, or the structural integrity of the Building, Tenant shall utilize the services of the contractors used by Landlord to provide such services or, if Tenant is unable to determine which contractors Landlord uses to provide such services after diligent inquiry, a qualified, experienced and solvent contractor that regularly performs similar work in similar buildings in the area in which the Building is located. Nothing contained herein shall be deemed to give Tenant the right to take any action or to make any repair in any Common Area or the right to modify the structure, layout or design of the Building. In addition, Tenant shall not have the right to make any repair pursuant to this section, unless such repair is necessary to remedy a problem which substantially and adversely affects Tenant's use of the Premises. All repairs made by Tenant shall be made in accordance with all applicable laws, and Landlord shall not be responsible for any defective work performed by Tenant or contractors hired by Tenant. Tenant shall pay all costs incurred with respect to any actions or repairs made by Tenant and shall pay all claims for labor and materials furnished to Tenant as and when due.

12. TENANT'S REPAIRS.

12.1 *OBLIGATIONS OF TENANT.* Subject to section 12.2 below. Tenant shall, at its sole cost and expense, keep and maintain all parts of the Premises (except those listed as Landlord's responsibility in section 11 above) in good and sanitary condition, promptly making all necessary repairs and replacements, including but not limited to, windows, glass and plate glass, doors, skylights, roof membranes, any special store front or office entry, walls and finish work, floors and floor coverings, heating and air conditioning systems, dock boards, bumpers, plates, seals, levelers and lights, plumbing work and fixtures (including periodic backflow testing), electrical systems, lighting facilities and bulbs, sprinkler systems, alarm systems, fire detection systems, termite and pest extermination, sidewalks, landscaped areas, fencing, tenant signage and regular removal of trash and debris. Tenant shall notify Landlord in writing prior to making any repair or performing any maintenance pursuant to this section, and Landlord shall have the right to designate the contractor Tenant shall use to make any repair or to perform any maintenance on the roof, heating, ventilation and air conditioning systems ("*HVAC*"), plumbing systems, electrical systems, sprinkler systems, fire alarm systems or fire detection systems located at the Premises. Notwithstanding the foregoing, Tenant shall have the right to perform routine repairs and maintenance in the Premises without notifying Landlord provided that the routine repair or maintenance item (i) will not affect any other tenant of the Project or the exterior of the Building, (ii) is not a Landlord Maintenance Item (as defined below) and (iii) will not cost more than Two Thousand Dollars ($2,000.00). Tenant shall not paint or otherwise change the exterior appearance of the Premises without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. The cost of maintenance and repair of any common party wall (any wall, divider, partition or any other structure separating the Premises from any adjacent premises occupied by other tenants) shall be shared equally by Tenant and the tenant occupying the adjacent premises; *provided*, *however*, if Tenant damages a party wall the entire cost of the repair shall be paid by Tenant, at Tenant's sole expense. Tenant shall not damage any party wall or disturb

the integrity and support provided by any party wall. If Tenant fails to keep the Premises in good condition and repair, Landlord may, but shall not be obligated to, make any necessary repairs. If Landlord makes such repairs, Landlord may bill Tenant for the cost of the repairs as additional rent, and said additional rent shall be payable by Tenant within ten (10) days after demand by Landlord.

12.2 *PERFORMANCE OF WORK BY LANDLORD.* Notwithstanding Tenant's obligation to keep the roof membranes, HVAC units, sprinkler systems, fire alarm systems, fire detection systems and exterior walls of the Premises in good condition and repair, Landlord shall employ contractors to perform all repairs, maintenance and replacements of the roof membranes, HVAC units, sprinkler systems, fire alarm systems, fire detection systems and exterior walls of the Premises. The items described in the previous sentence that Landlord will cause to be repaired, maintained and replaced are hereinafter referred to as the "Landlord Maintenance Items." Tenant shall reimburse Landlord as additional rent for all costs Landlord incurs in performing the Landlord Maintenance Items within ten (10) days after written demand by Landlord. Landlord shall determine in its sole discretion the scope and timing of the performance of such Landlord Maintenance Items, and Tenant shall not perform such Landlord Maintenance Items. Landlord's maintenance of the exterior walls of the Premises shall include the right, but not the obligation, of Landlord to paint from time to time all or some of the exterior walls, canopies, doors, windows, gutters, handrails and other exterior parts of the Premises with colors selected by Landlord, and Tenant shall reimburse Landlord as provided above for all costs incurred by Landlord in painting such items. If the Premises contains landscaped areas ("*Landscaped Areas*"), Landlord shall maintain the Landscaped Areas, and Tenant shall reimburse Landlord for all costs incurred by Landlord in maintaining the Landscaped Areas within ten (10) days after written demand by Landlord; *provided*, *however*, Landlord shall have the right to estimate the monthly cost of maintaining the Landscaped Areas, and Tenant shall pay such amount to Landlord as additional rent each month at the same time Tenant pays Base Rent. Tenant shall Immediately give Landlord written notice of any repair or maintenance required by Landlord pursuant to this section, after which Landlord shall have a reasonable time in which to complete such repair or maintenance. Landlord shall have the right, but not the obligation, to include the cost of Landlord Maintenance Items and the cost of the maintenance of Landscaped Areas in Operating Expenses, and Tenant shall then pay Tenant's Percentage Share of such costs as determined by Landlord. Landlord shall have the right at any time, and from time to time, to elect upon written notice to Tenant to have Tenant perform some or all of the Landlord Maintenance Items and/or the maintenance of the Landscaped Areas, in which event Tenant shall employ contractors designated by Landlord to perform such work and shall pay for all such work at Tenant's sole cost and expense, all in accordance with the requirements of section 12.1.

12.3 *MAINTENANCE CONTRACTS.* Landlord shall enter into regularly scheduled preventative maintenance/service contacts for some or all of the following: the HVAC units servicing the Premises, the sprinkler, fire alarm and fire detection systems servicing the Premises, backflow testing for the plumbing servicing the Premises and for the roof membrane of the Premises (the "*Maintenance Contracts*"). The Maintenance Contracts shall include maintenance services satisfactory to Landlord, in Landlord's sole discretion. Tenant shall reimburse Landlord for the cost of the Maintenance Contracts within ten (10) days after written demand by Landlord; *provided*, *however*, Landlord shall have the right to estimate the monthly cost of the Maintenance Contracts, and Tenant shall pay such amount to Landlord as additional rent each month at the same time Tenant pays Base Rent. Landlord shall have the right, but not the obligation, to include the cost of Maintenance Contracts in Operating Expenses, and Tenant shall then pay Tenant's Percentage Share of such costs as determined by Landlord. Landlord

shall have the right at any time, and from time to time, to elect upon written notice to Tenant to have Tenant purchase some or all of the Maintenance Contracts, in which event Tenant shall purchase such contracts from persons designated or approved by Landlord and shall pay for such Maintenance Contracts at Tenant's sole cost and expense. Landlord shall obtain Maintenance Contracts at commercially reasonable costs.

13. ALTERATIONS AND SURRENDER.

13.1 *CONSENT OF LANDLORD.*

(a) *GENERALLY.* Tenant shall have the right, subject to Landlord's reasonable requirements relating to construction at the Project, upon ten (10) days prior written notice to Landlord, to make alterations ("*Permitted Alterations*") to the inside of the Premises that do not (i) involve the expenditure of more then $50,000.00; (iii) affect the exterior appearance of the Building or the roof, (iii) affect the Building's electrical, plumbing, HVAC, life, fire safety or similar Building systems or the structural elements of the Building, or (iv) materially adversely affect any other tenant of the Project. Except with respect to Permitted Alterations, Tenant shall not, without Landlord's prior written consent, which may be given or withheld in Landlord's reasonable discretion, make any alterations, improvements, additions, utility installations or repairs (hereinafter collectively referred to as "*Non-Permitted Alterations*") in, on or about the Premises or the Project. References in this Lease to "Alterations" shall mean both Permitted Alterations and Non-Permitted Alterations, but not the initial Tenant improvements (as defined in the Work Letter Agreement). Subject to section (b) below, at the expiration of the term, Landlord may require the removal of any Alterations installed by Tenant and the restoration of the Premises and the Project to their prior condition, at Tenant's expense if, at the time of Landlord's consent, Landlord did not agree in writing that Tenant would not be obligated to remove the Alterations. If, as a result of any Alteration made by Tenant, Landlord is obligated to comply with the Americans With Disabilities Act or any other law or regulation, and such compliance requires Landlord to make any improvement or Alteration to any portion of the Project, as a condition to Landlord's consent, Landlord shall have the right to require Tenant to pay to Landlord, prior to the construction of any Alteration by Tenant, the entire cost of any improvement or alteration Landlord is obligated to complete by such law or regulation. Should Landlord permit Tenant to make its own Alterations, Tenant shall use only such architect and contractor as has been reasonably approved by Landlord, and if the cost of the Alteration will exceed $50,0000 Landlord may require Tenant to provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alterations, to insure Landlord against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Tenant make any Alterations without the prior approval of Landlord, or use a contractor not expressly approved by Landlord, Landlord may, at any time during the term of this Lease, require that Tenant remove all or part of the Alterations and return the Premises to the condition it was in prior to the making of the Alternations. In the event Tenant makes any Alterations, Tenant agrees to obtain or cause its contractor to obtain, prior to the commencement of any work, "builders all risk" insurance in an amount approved by Landlord, workers compensation insurance and any other insurance requested by Landlord; in Landlord's reasonable discretion.

(b) *INITIAL TENANT IMPROVEMENTS AND RADIATION CELLS.* Except as provided below, Landlord hereby approves and agrees to permit Tenant to leave the Tenant improvements (as defined in the Work Letter Agreement) in the Premises at the end of

the term of the Lease. Landlord shall not be entitled to reimbursed by Tenant or from the Tenant improvement Allowance for any costs incurred by Landlord in monitoring the construction of the Tenant improvements or in reviewing and/or approving any plans and specifications for the Tenant Improvements. Tenant intends to install four concrete radiation cells in the Premises as part of the initial Tenant improvements, as more particularly described on the Space Plan attached to the Work Letter Agreement (the "*Initial Radiation Cells*"). The Space Plan attached to the Work Letter Agreement also describes the location of two additional concrete radiation cells that Tenant may wish to install after the initial Tenant improvements are completed (the "*Additional Radiation Cells*"). Subject to the terms and conditions of this section 13, Landlord hereby consents to the construction of the Additional Radiation Cells by Tenant at any time during the term of the Lease. The Additional Radiation Cells shall be placed in the locations described on the Space Plan and shall be constructed using materials and designs that are similar to the Initial Radiation Cells. Tenant shall have no obligation to remove the Initial Radiation Cells or to restore the Premises to the condition it was in prior to the installation of the Initial Radiation Cells unless Tenant defaults in the performance of its obligations under this Lease during the Initial Term and this Lease is terminated as a result of such default, in which case Tenant shall be obligated to remove the Initial Radiation Cells from the Premises. If Tenant installs the Additional Radiation Cells during the Initial Term and Tenant does not exercise the Extension Option, prior to the expiration of the Initial Term, Tenant shall remove the Additional Radiation Cells and restore the Premises to the condition it was in prior to the Installation of the Additional Radiation Cells. If Tenant exercises the Extension Option and performs all of its obligations under this Lease during the term of the Extension Option, if Tenant has installed the Additional Radiation Cells, Tenant shall have no obligation to remove the Additional Radiation Cells from the Premises. If Tenant defaults in the performance of its obligations under this Lease during the Extended Term and this Lease is terminated as a result of such default, Tenant shall be obligated to remove the Additional Radiation Cells and to restore the Premises to the condition it was in prior to the installation of the Additional Radiation Cells.

13.2 *PERMITS.* Any Alterations in or about the Premises that Tenant shall desire to make shall be presented to Landlord in written form, and if a building permit will be required, with plans and specifications which are sufficiently detailed to obtain a building permit. If Landlord consents to an Alteration, the consent shall be deemed conditioned upon Tenant acquiring a building permit from the applicable governmental agencies, furnishing a copy thereof to Landlord prior to the commencement of the work, and compliance by Tenant with all conditions of said permit in a prompt and expeditious manner. Tenant shall provide landlord with as-built plans and specifications for any Alterations made to the Premises.

13.3 *MECHANICS LIENS.* Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or the Project, or any interest therein. If Tenant shall, in good faith, contest the validity of any such lien, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to not less than one and one-half times the amount of such contested lien claim indemnifying Landlord against liability arising out of such lien or claim. Such bond shall be sufficient in form and amount to free the Project from the effect of such lien. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in participating in such action.

13.4 *NOTICE.* Tenant shall give Landlord not less than ten (10) days' advance written notice prior to the commencement of any work in the Premises by Tenant, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Project.

13.5 *SURRENDER.* Subject to Landlord's right to require removal or to elect ownership as hereinafter provided, all Alterations made by Tenant to the Premises shall be the property of Tenant, but shall be considered to be a part of the Premises. Unless Landlord gives Tenant written notice of its election not to become the owner of the Alterations at the end of the term of this Lease, the Alterations shall become the property of Landlord at the end of the term of this Lease. Landlord may require, on notice to Tenant, that some or all Alterations be removed prior to the end of the term of this Lease and that any damages caused by such removal be repaired at Tenant's sole expense. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises (including, but not limited to, all doors, windows, floors and floor coverings, skylights, heating and air conditioning systems, dock boards, truck doors, dock bumpers, plumbing work and fixtures, electrical systems, lighting facilities, sprinkler systems, fire detection systems and nonstructural elements of the exterior walls, foundation and roof (collectively the "*Elements of the Premises*")) to Landlord in the same condition as received, ordinary wear and tear and casualty damage excepted, clean and free of debris and Tenant's personal property, trade fixtures and equipment. Tenant's personal property shall include all computer wiring and cabling installed by Tenant. Provided, however, if Landlord has not elected to have Tenant remove the Alterations, Tenant shall leave the Alterations at the Premises in good condition and repair, ordinary wear and tear excepted. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Damage to or deterioration of any Element of the Premises or any other item Tenant is required to repair or maintain at the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices. If the Premises are not surrendered at the expiration of the term or earlier termination of this Lease in accordance with the provisions of this section, at Landlord's option, Tenant shall continue to be responsible for the payment of Base Rent and all other amounts due under this Lease until the Premises are so surrendered in accordance with said provisions. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all damages, expenses, costs, losses or liabilities arising from any delay by Tenant in so surrendering the Premises including, without limitation, any damages, expenses, costs, losses or liabilities arising from any claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses and damages suffered by Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

13.6 *FAILURE OF TENANT TO REMOVE PROPERTY.* If this Lease is terminated due to the expiration of its term or otherwise, and Tenant fails to remove its property, in addition to any other remedies available to Landlord under this Lease, and subject to any other right or remedy Landlord may have under applicable law, Landlord may remove any property of Tenant from the Premises and store the same elsewhere at the expense and risk of Tenant.

14. DAMAGE AND DESTRUCTION.

14.1 *EFFECT OF DAMAGE OR DESTRUCTION.* If all or part of the Project is damaged by fire, earthquake, flood, explosion, the elements, riot, the release or existence of Hazardous Materials (as defined below) or by any other cause whatsoever (hereinafter collectively referred to as "damages"), but the damages are not material (as defined in section 14.2 below), Landlord shall repair the damages to the Project as soon as is reasonably possible, and

this Lease shall remain in full force and effect. If all or part of the Project is destroyed or materially damaged (as defined in section 14.2 below), Landlord shall have the right, in its sole and complete discretion, to repair or to rebuild the Project or to terminate this Lease. Landlord shall within one hundred twenty (120) days after the discovery of such material damage or destruction notify Tenant in writing of Landlord's intention to repair or to rebuild or to terminate this Lease. Tenant shall in no event be entitled to compensation or damages on account of annoyance or inconvenience in making any repairs, or on account of construction, or on account of Landlord's election to terminate this Lease. Notwithstanding the foregoing, if Landlord shall elect to rebuild or repair the Project after material damage or destruction, but in good faith determines that the Premises cannot be substantially repaired within three hundred sixty (360) days after the date of the discovery of the material damage or destruction, without payment of overtime or other premiums, and the damage to the Project will render the entire Premises unusable during said three hundred sixty (360) day period, Landlord shall notify Tenant thereof in writing at the time of Landlord's election to rebuild or repair, and Tenant shall thereafter have a period of fifteen (15) days within which Tenant may elect to terminate this Lease, upon thirty (30) days' advance written notice to Landlord. Tenant's termination right described in the preceding sentence shall not apply if the damage was caused by the negligent or intentional acts of Tenant or its employees, agents, contractors or invitees. Failure of Tenant to exercise said election within said fifteen (15) day period shall constitute Tenant's agreement to accept delivery of the Premises under this Lease whenever tendered by Landlord, provided Landlord thereafter pursues reconstruction or restoration diligently to completion, subject to delays caused by Force Majeure Events. Tenant shall also have the right to terminate this Lease in the event that, notwithstanding Landlord's good faith estimate that the Premises can be substantially repaired within three hundred sixty (360) days after the date of damage or destruction, the Premises are not in fact substantially repaired within such three hundred sixty (360) day period (as extended by Force Majeure Events). Tenant shall provide Landlord with written notice of its election to terminate this Lease because the repairs are not completed in three hundred sixty (360) days within ten (10) days after the three hundred sixty (360) day. Failure of Tenant to exercise said election within said ten (10) day period shall constitute Tenant's agreement to accept delivery of the Premises under this Lease whenever tendered by Landlord, provided Landlord thereafter pursues reconstruction or restoration diligently to completion, subject to delays caused by Force Majeure Events. If Landlord is unable to repair the damage to the Premises or the Project during such three hundred sixty (360) day period due to Force Majeure Events, the three hundred sixty (360) day period shall be extended by the period of delay caused by the Force Majeure Events. A "Force Majeure Event" shall mean fire, earthquake, weather delays or other acts of God, strikes, boycotts, war, riot, insurrection, embargoes, shortages of equipment, labor or materials, delays in issuance of governmental permits or approvals not caused by Landlord or its agents or contractors, or any other cause beyond the reasonable control of Landlord. Subject to section 14.3 below, if Landlord or Tenant terminates this Lease in accordance with this section 14.1, Tenant shall continue to pay all Base Rent, Operating Expenses and other amounts due hereunder which arise prior to the date of termination. Tenant shall also have the right to terminate this Lease if damage occurs to the Premises during the last twelve (12) months of the Lease term, such damage renders a substantial portion of the Premises unusable, and such damage cannot be substantially repaired within sixty (60) days. Tenant's termination right described in the previous sentence shall be exercised by providing Landlord with written notice within fifteen (15) days after the occurrence of the damage.

14.2 *DEFINITION OF MATERIAL DAMAGE.* Damage to the Project shall be deemed material if, in Landlord's reasonable judgment, the uninsured cost of repairing the damage will exceed

One Hundred Thousand Dollars (100,000). If insurance proceeds are available to Landlord in an amount which is sufficient to pay the entire cost of repairing all of the damage to the Project, the damage shall be deemed material if the cost of repairing the damage exceeds Five Hundred Thousand Dollars ($500,000). Damage to the Project shall also be deemed material if (a) the Project cannot be rebuilt or repaired to substantially the same condition it was in prior to the damage due to laws or regulations in effect at the time the repairs will be made, (b) the holder of any mortgage or deed of trust encumbering the Project requires that insurance proceeds available to repair the damage in excess of One Hundred Thousand Dollars ($100,000) be applied to the repayment of the indebtedness secured by the mortgage or the deed of trust, or (c) the damage occurs during the last twelve (12) months of the Lease term.

14.3 *ABATEMENT OF RENT.* If Landlord elects to repair damage to the Project and all or part of the Premises will be unusable or inaccessible to Tenant in the ordinary conduct of its business until the damage is repaired, Tenant's Base Rent and Tenant's Percentage Share of Operating Expenses shall be abated until the repairs are completed in proportion to the amount of the Premises which is unusable or inaccessible to Tenant in the ordinary conduct of its business. Notwithstanding the foregoing, there shall be no abatement of Base Rent or Tenant's Percentage Share of Operating Expenses by reason of any portion of the Premises being unusable or inaccessible for a period equal to five (5) consecutive business days or less.

14.4 *TENANT'S ACTS.* If such damage or destruction occurs as a result of the negligence or the intentional acts of Tenant or Tenant's employees, agents, contractors or invitees, and the proceeds of insurance which are actually received by Landlord are not sufficient to pay for the repair of all of the damage, Tenant shall pay, at Tenant's sole cost and expense, to Landlord upon demand, the difference between the cost of repairing the damage and the insurance proceeds received by Landlord.

14.5 *TENANT'S PROPERTY.* Landlord shall not be liable to Tenant or its employees, agents, contractors, invitees or customers for loss or damage to merchandise, tenant improvements, fixtures, automobiles, furniture, equipment, computers, files or other property (hereinafter collectively "*Tenant's property*") located at the Project. Tenant shall repair or replace all of Tenant's property at Tenant's sole cost and expense. Tenant acknowledges that it is Tenant's sole responsibility to obtain adequate insurance coverage to compensate Tenant for damage to Tenant's property.

14.6 *WAIVER.* Landlord and Tenant hereby waive the provisions of any present or future statutes which relate to the termination of leases when leased property is damaged or destroyed and agree that such event shall be governed by the terms of this Lease.

15. **CONDEMNATION.** If any portion of the Premises or the Project are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "*condemnation*"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; *provided* that if so much of the Premises or Project are taken by such condemnation as would substantially and adversely affect the operation and profitability of Tenant's business conducted from the Premises, and said taking lasts for ninety (90) days or more, Tenant shall have the option, to be exercised only in writing within thirty (30) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), to terminate this Lease as of the date the condemning authority takes such possession. If a taking lasts for less than ninety (90) days, Tenant's rent shall be abated during said period but Tenant shall not have the right to terminate this Lease. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of

the Premises remaining, except that the Base Rent and Operating Expenses shall be reduced in the proportion that the usable floor area of the Premises taken bears to the total usable floor area of the Premises. Common Areas taken shall be excluded from the Common Areas usable by Tenant and no reduction of rent shall occur with respect thereto or by reason thereof. Landlord shall have the option in its sole discretion to terminate this Lease as of the taking of possession by the condemning authority, by giving written notice to Tenant of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises or the Project. Any award for the taking of or any part of the Premises or the Project under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold, for good will, for the taking of the fee, as severance damages, or as damages for tenant improvements; *provided*, however, that Tenant shall be entitled to any separate award for loss of or damage to Tenant's removable personal property and for moving expenses. In the event that this Lease is not terminated by reason of such condemnation, and subject to the requirements of any lender that has made a loan to Landlord encumbering the Project, Landlord shall to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Project caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. This section, not general principles of law or California Code of Civil Procedure sections 1230.010 et seq., shall govern the rights and obligations of Landlord and Tenant with respect to the condemnation of all or any portion of the Project.

16. ASSIGNMENT AND SUBLETTING.

16.1 ***Landlord's Consent Required.*** Except as provided in section 16.8, Tenant shall not voluntarily or by operation of law assign, transfer, hypothecate, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises (hereinafter collectively a "Transfer"), without Landlord's prior written consent, which shall not be unreasonably withheld. Landlord shall respond to Tenant's written request for consent hereunder within thirty (30) days after Landlord's receipt of the written request from Tenant. Any attempted Transfer without such consent shall be void and shall constitute a default and breach of this Lease. Tenant's written request for Landlord's consent shall include, and Landlord's thirty (30) day response period referred to above shall not commence, unless and until Landlord has received from Tenant, all of the following information, if readily available (and if not readily available, then information sufficient for reasonable financial review): (a) financial statements for the proposed assignee or subtenant for the past three (3) years prepared in accordance with generally accepted accounting principles, (b) federal tax returns for the proposed assignee or subtenant for the past three (3) years, (c) a reasonably detailed description of the business the assignee or subtenant intends to operate at the Premises, (d) the proposed effective date of the assignment or sublease, (e) a copy of the proposed sublease or assignment agreement, (f) a reasonably detailed description of any Alterations the proposed assignee or subtenant desires to make to the Premises, and (g) a Hazardous Materials Disclosure Certificate substantially in the form of Exhibit D attached hereto completed by the assignee or subtenant (the "Transferee HazMat Certificate"). If the obligations of the proposed assignee or subtenant will be guaranteed by any person or entity, Tenant's written request shall not be considered complete until the information described in (a) and (b) of the previous sentence has been provided with respect to each proposed guarantor. "Transfer shall not include the transfer (a) if Tenant is a corporation, and Tenant's stock is not publicly traded over a recognized securities exchange, of any or all of the voting stock of such corporation during the term of this Lease (whether or not in one or more transfers) or the dissolution, merger or liquidation of the corporation, or (b) if Tenant is a partnership, limited liability company, limited liability partnership or other entity, of any or all of the profit and loss participation in such partnership or entity during the term of this Lease (whether or not in one or more transfers) or the dissolution, merger or liquidation of the partnership, limited liability company, limited liability partnership or other entity. If Landlord shall reasonably deny a request for consent to a proposed assignment or sublease, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, damages, costs and claims that may be made against Landlord by the proposed assignee or subtenant, or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease; provided, however, this indemnity shall not apply to the unreasonable denial, negligence or willful misconduct of Landlord.

16.2 ***Intentionally Deleted.***

16.3 ***Standard For Approval.*** Landlord shall not unreasonably withhold its consent to a Transfer provided that Tenant has complied with each and every requirement, term and condition of this section 16. Tenant acknowledges and agrees that each requirement, term and condition in this section 16 is a reasonable requirement, term or condition. It shall be deemed reasonable for Landlord to withhold its consent to a Transfer if any requirement, term or condition of this section 16 is not complied with or: (a) the Transfer would cause Landlord to be in violation of its obligations under another lease or agreement to which Landlord is a party; (b) in Landlord's reasonable judgment, a proposed assignee or subtenant is not able financially to pay the rents due under this Lease as and when they are due and payable; (c) a proposed assignee's or subtenant's business will impose a burden on the Projects parking

facilities, Common Areas or utilities that is greater than the burden imposed by Tenant, in Landlord's reasonable judgment, (d) the terms of a proposed assignment or subletting will allow the proposed assignee or subtenant (other than an Affiliate (as defined below) to exercise a right of renewal, right of expansion, right of first offer, right of first refusal or similar right held by Tenant; (e) a proposed assignee or subtenant refuses to enter into a written assignment agreement or sublease, reasonably satisfactory to Landlord, which provides that it will abide by and assume all of the terms and conditions of this Lease for the term of any assignment or sublease and containing such other terms and conditions as Landlord reasonably deems necessary; (f) the use of the Premises by the proposed assignee or subtenant will not be a use permitted by this Lease; (g) any guarantor of this Lease refuses to consent to the Transfer or to execute a written agreement reaffirming the guaranty; (h) Tenant is in default as defined in section 17 at the time of the request; (i) if requested by Landlord, the assignee or subtenant refuses to sign a non-disturbance and attornment agreement in favor of Landlord's lender; (j) Landlord has sued or been sued by the proposed assignee or subtenant or has otherwise been involved in a legal dispute with the proposed assignee or subtenant; (k) the assignee or subtenant is involved in a business which is not in keeping with the then-current standards of the Project; (l) the proposed assignee or subtenant is an existing tenant of the Project or is a person or entity then negotiating with Landlord for the lease of space in the Project; (m) the assignee or subtenant is a governmental or quasi-governmental entity or an agency, department or instrumentality of a governmental or quasi-governmental agency; or (n) the assignee or subtenant will use, store or handle Hazardous Materials in or about the Premises of a type, nature, quantity not acceptable to Landlord, in Landlord's sole discretion.

16.4 ***Additional Terms and Conditions.*** The following terms and conditions shall be applicable to any Transfer:

(a) Regardless of Landlord's consent, no Transfer shall release Tenant from Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder and to perform all other obligations to be performed by Tenant hereunder or release any guarantor from its obligations under its guaranty.

(b) Landlord may accept rent from any person other than Tenant pending approval or disapproval of an assignment or subletting.

(c) Neither a delay in the approval or disapproval of a Transfer, nor the acceptance of rent, shall constitute a waiver or estoppel of Landlord's right to exercise its rights and remedies for the breach of any of the terms or conditions of this section 16.

(d) The consent by Landlord to any Transfer shall not constitute a consent to any subsequent Transfer by Tenant or to any subsequent or successive Transfer by an assignee or subtenant. However, Landlord may consent to subsequent Transfers or any amendments or modifications thereto without notifying Tenant or anyone else liable on the Lease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease.

(e) In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including any subtenant or assignee, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord.

(f) Landlord's written consent to any Transfer by Tenant shall not constitute an acknowledgment that no default then exists under this Lease nor shall such consent be deemed a waiver of any then-existing default.

(g) The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's consent null and void.

(h) Landlord shall not be liable under this Lease or under any sublease to any subtenant.

(i) No assignment or sublease may be modified or amended without Landlord's prior written consent.

(j) Intentionally deleted.

(k) Any assignee of, or subtenant under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Landlord, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment or sublease, other than such obligations as are contrary or inconsistent with provisions of an assignment or sublease to which Landlord has specifically consented in writing.

(l) At Landlord's request, Tenant shall deliver to Landlord, Landlord's standard consent to assignment or consent to sublease agreement, as applicable, executed by Tenant, the assignee and the subtenant, as applicable.

16.5 ***Additional Terms and Conditions Applicable to Subletting.*** The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Tenant hereby absolutely and unconditionally assigns and transfers to Landlord all of Tenant's interest in all rentals and income arising from any sublease entered into by Tenant, and Landlord may collect such rent and income and apply same toward Tenant's obligations under this Lease; provided, however, that until a default shall occur in the performance of Tenant's obligations under this Lease, Tenant may receive, collect and enjoy the rents accruing under such sublease. Landlord shall not, by reason of this or any other assignment of such rents to Landlord nor by reason of the collection of the rents from a subtenant, be deemed to have assumed or recognized any sublease or to be liable to the subtenant for any failure of Tenant to perform and comply with any of Tenant's obligations to such subtenant under such sublease, including, but not limited to, Tenant's obligation to return any security deposit. Tenant hereby irrevocably authorizes and directs any such subtenant, upon receipt of a written notice from Landlord stating that a default exists in the performance of Tenant's obligations under this Lease, to pay to Landlord the rents due as they become due under the sublease. Tenant agrees that such subtenant shall have the right to rely upon any such statement and request from Landlord, and that such subtenant shall pay such rents to Landlord without any obligation or right to inquire as to whether such default exists and notwithstanding any notice or claim from Tenant to the contrary.

(b) In the event Tenant shall default in the performance of its obligations under this Lease, Landlord, at its option and without any obligation to do so, may require any subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of Tenant under such sublease from the time of the exercise of said option to the termination of such sublease; provided, however, Landlord shall not be liable for any prepaid rents or

security deposit paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease.

16.6 ***Transfer Premium from Assignment or Subletting.*** Landlord shall be entitled to receive from Tenant (as and when received by Tenant) as an item of additional rent one-half of all amounts received by Tenant from the assignee or subtenant in excess of the amounts payable by Tenant to Landlord hereunder (the "Transfer Premium"). The Transfer Premium shall be reduced by the reasonable brokerage commissions, tenant improvement costs and legal fees actually paid by Tenant in order to assign the Lease or to sublet a portion of the Premises. The Transfer Premium shall include all Base Rent, additional rent or other consideration of any type whatsoever payable by the assignee or subtenant in excess of the Base Rent and additional rent payable by Tenant under this Lease. If less than all of the Premises is transferred the Base Rent and the additional rent shall be determined on a per-leasable-square-foot basis. The Transfer Premium shall also include any money paid to Tenant by the assignee or subtenant in order to avoid or reduce the Transfer Premium payable to Landlord.

16.7 ***Intentionally Deleted.***

16.8 ***Affiliated Entity.*** An assignment of the Lease or sublease of all or any portion of the Premises to any entity which controls or is controlled by Tenant or which acquires all or substantially all of the assets of Tenant or which is the surviving entity resulting from a merger or consolidation of Tenant (in each such case, an "Affiliate") or the sale of stock in Tenant to the public, shall not require Landlord's consent under section 16.1 of the Lease, provided that, in the case of a Transfer to an Affiliate, at least fifteen (15) days prior to such assignment or sublease (i) Tenant provides Landlord with reasonable evidence that any such entity maintains annual revenues sufficient to meet the financial obligations hereunder, (ii) Tenant notifies Landlord in writing of any such assignment or sublease and provides Landlord with evidence that such assignment or sublease is a Transfer permitted by this section; (iii) prior to the date an assignment or sublease will take effect, the assignee or sublessee and Tenant shall enter into Landlord's standard consent to sublease agreement or consent to assignment agreement (the "Transfer Agreements"), and (iv) subject to the limitation set forth in section 16.9 of the Lease, Tenant shall pay the reasonable costs and expenses (including legal fees) incurred by Landlord in confirming that the assignment or sublease meets the requirements of this Section and in preparing any Transfer Agreement. Whether or not an assignment or sublease to an Affiliate is made pursuant to the terms of section, Tenant shall not be relieved of its obligations under this Lease. Sections 16.6 and 16.7 of the Lease shall not apply to assignments or subleases to Affiliates.

16.9 ***Landlord's Expenses.*** In the event Tenant shall assign this Lease or sublet the Premises or request the consent of Landlord to any Transfer, then Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including, but not limited to, attorneys', architects', accountants', engineers' or other consultants' fees; provided, however, Landlord shall not be entitled to recover more than Two Thousand Five Hundred Dollars ($2,500.00) of attorneys' fees with respect to any one Transfer.

17. DEFAULT; REMEDIES.

17.1 ***Default by Tenant.*** Landlord and Tenant hereby agree that the occurrence of any one or more of the following events is a default by Tenant under this Lease and that said default shall give Landlord the rights described in section 17.2. Landlord or Landlord's authorized agent shall have the right to execute and to deliver any notice of default, notice to pay rent or quit or any other notice Landlord gives Tenant.

(a) Tenant's failure to make any payment of Base Rent, Tenant's Percentage Share of Operating Expenses, Tenant's Percentage Share of Real Property Taxes or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a notice to pay rent or quit pursuant to applicable unlawful detainer statutes, such notice shall also constitute the notice required by this section 17.1(a).

(b) The abandonment of the Premises by Tenant coupled with the non-payment of rent, in which event Landlord shall not be obligated to give any notice of default to Tenant.

(c) The failure of Tenant to comply with any of its obligations under sections 23, 25, 26 and 28 where Tenant fails to comply with its obligations or fails to cure any earlier breach of such obligation within ten (10) days following written notice from Landlord to Tenant. In the event Landlord serves Tenant with a notice to quit or any other notice pursuant to applicable unlawful detainer statutes, said notice shall also constitute the notice required by this section 17.1(c).

(d) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant (other than those referenced in sections 17.1(a), (b) and (c), above), where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's nonperformance is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said ten (10) day period and thereafter diligently pursues such cure to completion. In the event that Landlord serves Tenant with a notice to quit or any other notice pursuant to applicable unlawful detainer statutes, said notice shall also constitute the notice required by this section 17.1(d).

(e) (i) The making by Tenant or any guarantor of Tenant's obligations hereunder of any general arrangement or general assignment for the benefit of creditors; (ii) Tenant or any guarantor becoming a "debtor" as defined in 11 U.S.C. 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant or guarantor, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenants interest in this Lease, where such seizure is not discharged within thirty (30) days; or (v) the insolvency of Tenant. In the event that any provision of this section 17.1(e) is unenforceable under applicable law, such provision shall be of no force or effect.

(f) The discovery by Landlord that any financial statement, representation or warranty given to Landlord by Tenant, or by any guarantor of Tenant's obligations hereunder, was materially false at the time given. Tenant acknowledges that Landlord has entered into this Lease in material reliance on such information.

(g) If Tenant is a corporation, partnership, limited liability company or similar entity, the dissolution or liquidation of Tenant.

(h) If Tenant's obligations under this Lease are guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the

subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis.

17.2 Remedies.

(a) In the event of any default or breach of this Lease by Tenant, Landlord may, at any time thereafter, with or without notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(i) terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant (A) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (B) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (C) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (D) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of releasing, inducing necessary renovation and alteration of the Premises, reasonable attorneys' fees, any real estate commissions actually paid by Landlord and the unamortized value of any free rent, reduced rent, tenant improvement allowance or other economic concessions provided by Landlord. The "worth at time of award" of the amounts referred to in section 17.2(a)(i)(A) and (B) shall be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum interest rate permitted by applicable law. The worth at the time of award of the amount referred to in section 17.2(a)(i)(C) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For purposes of this section 17.2(a)(i), "rent" shall be deemed to be all monetary obligations required to be paid by Tenant pursuant to the terms of this Lease.

(ii) maintain Tenant's right of possession, in which event Landlord shall have the remedy described in California Civil Code Section 1951.4 which permits Landlord to continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due. In the event Landlord elects to continue this Lease in effect, Tenant shall have the right to sublet the Premises or assign Tenant's interest in the Lease subject to the reasonable requirements contained in section 16 of this Lease and provided further that Landlord shall not require compliance with any standard or condition contained in section 16 that has become unreasonable at the time Tenant seeks to sublet or assign the Premises pursuant to this section 17.2(a)(ii).

(iii) collect sublease rents (or appoint a receiver to collect such rent) and otherwise perform Tenant's obligations at the Premises, it being agreed, however, that the appointment of a receiver for Tenant shall not constitute an election by Landlord to terminate this Lease.

(iv) pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises are located.

(b) No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity. The expiration or termination of this Lease and/or the termination of Tenant's right to possession of the Premises shall not relieve Tenant of liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term of the Lease or by reason of Tenant's occupancy of the Premises.

(c) If Tenant abandons or vacates the Premises, Landlord may re-enter the Premises, and such re-entry shall not be deemed to constitute Landlord's election to accept a surrender of the Premises or to otherwise relieve Tenant from liability for its breach of this Lease. No surrender of the Premises shall be effective against Landlord unless Landlord has entered into a written agreement with Tenant in which Landlord expressly agrees to (i) accept a surrender of the Premises and (ii) relieve Tenant of liability under the Lease. The delivery by Tenant to Landlord of possession of the Premises shall not constitute the termination of the Lease or the surrender of the Premises.

17.3 ***Default by Landlord.*** Landlord shall not be in default under this Lease unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord and to the holder of any mortgage or deed of trust encumbering the Project whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its cure, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default, and Tenant's remedies shall be limited to damages and/or an injunction. Tenant hereby waives its right to recover consequential damages (including, but not limited to, lost profits) or punitive damages arising out of a Landlord default. This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of a Force Majeure Event, and the time for Landlord's performance shall be extended for the period of any such delay. Any claim, demand, right or defense by Tenant that arises out of this Lease or the negotiations which preceded this Lease shall be barred unless Tenant commences an action thereon, or interposes a defense by reason thereof, within six (6) months after the date of the inaction, omission, event or action that gave rise to such claim, demand, right or defense.

17.4 ***Late Charges.*** Tenant hereby acknowledges that late payment by Tenant to Landlord of Base Rent, Tenant's Percentage Share of Operating Expenses or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which wilt be extremely difficult lo ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed encumbering the Project. Accordingly, if any installment of Base Rent, Tenant's Percentage Share of Operating Expenses or any other sum due from Tenant shall not be received by Landlord when such amount shall be due, then, without any requirement for notice or demand to Tenant, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such overdue amount; provided, however, that Landlord shall waive the late charge one (1) time during each calendar year of the term of this Lease if Tenant pays all overdue sums within five (5) days after receipt of written notice by Landlord to Tenant advising Tenant that such payment is overdue. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a

waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder, including the assessment of interest under section 17.5.

17.5 ***Interest on Past-Due Obligations.*** Except as expressly herein provided, any amount due to Landlord that is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law. Payment of such interest shall not excuse or cure any default by Tenant under this Lease; provided, however, that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant.

17.6 ***Payment of Rent and Security Deposit After Default.*** If Tenant fails to pay Base Rent, Tenant's Percentage Share of Operating Expenses, parking charges or any other monetary obligation due hereunder on the date it is due, after Tenant's third failure in any twelve (12) month period to pay any monetary obligation on the date it is due, at Landlord's option, all monetary obligations of Tenant hereunder shall thereafter be paid by cashier's check, and Tenant shall, upon demand, provide Landlord with an additional security deposit equal to three (3) months' Base Rent. If Landlord has required Tenant to make said payments by cashier's check or to provide an additional security deposit, Tenant's failure to make a payment by cashier's check or to provide the additional security deposit shall be a default hereunder.

18. **LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of rent. If Tenant shall fail to perform any of its obligations under this Lease, Landlord may, but shall not be obligated to, after three (3) days' prior written notice to Tenant, make any such payment or perform any such act on Tenant's behalf without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder. Tenant shall pay to Landlord, within ten (10) days after delivery by Landlord to Tenant of statements therefor, an amount equal to the expenditures reasonably made by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of this section.

19. **INDEMNITY.** Tenant shall indemnify, defend, protect, and hold harmless Landlord, its partners, subpartners, parent organization, affiliates, subsidiaries, and their respective officers, directors, legal representatives, successors, assigns, agents, servants, employees and independent contractors and each of them (collectively, "Landlord Parties") from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) (collectively, "Claims") incurred in connection with or arising from (a) any cause in or on the Premises or (b) any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, its partners, subpartners, parent organization, affiliates, subsidiaries and their respective officers, directors, contractors, agents, servants, employees, invitees, guests or licensees and each of them (collectively, "Tenant Parties") at the Project; provided, however, that Tenant shall not be required to indemnify and hold Landlord harmless from any Claims for death or personal injury by any person, company or entity resulting from the negligence or willful misconduct of the Landlord Parties. Landlord shall indemnify, defend, protect, and hold harmless Tenant from any Claim resulting from injuries to persons caused by the negligence or willful misconduct of Landlord. Tenant's agreement to indemnify and hold Landlord harmless, and Landlord's agreement to indemnify and hold Tenant harmless are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Landlord or Tenant, respectively, pursuant to this Lease to the extent such policies cover the results of such acts, omissions or willful misconduct. The provisions of this Section shall survive the expiration or sooner termination of this Lease. The Indemnified Parties need not first pay any Damages to be indemnified hereunder. This

indemnity is intended to apply to the fullest extent permitted by applicable law. Notwithstanding the foregoing, Landlord shall have no obligation to compensate Tenant for consequential damages (including lost profits).

20. **EXEMPTION OF LANDLORD FROM LIABILITY.** Except as may be otherwise provided in section 19, Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for loss of or damage to the merchandise, tenant improvements, fixtures, furniture, equipment, computers, files, automobiles, or other property of Tenant, Tenant's employees, agents, contractors or invitees, or any other person in or about the Project, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents, contractors or invitees, whether such damage or injury is caused by or results from any cause whatsoever including, but not limited to, theft, criminal activity at the Project, negligent security measures, bombings or bomb scares, Hazardous Materials, fire, steam, electricity, gas, water or rain, flooding, breakage of pipes, sprinklers, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Project, or from other sources or places, or from new construction or the repair, alteration or improvement of any part of the Project, and regardless of whether the cause of the damage or injury arises out of Landlord's or its employees', agents' or contractors' negligent or intentional acts. Landlord shall not be liable for any damages arising from any act or neglect of any employees, agents, contractors or invitees of any other tenant, occupant or user of the Project, nor from the failure of Landlord to enforce the provisions of the lease of any other tenant of the Project. Except as may be otherwise provided in section 19, Tenant, as a material part of the consideration to Landlord hereunder, hereby assumes all risk of damage to Tenant's property or business or injury to persons in, upon or about the Project arising from any cause, including Landlord's negligence or the negligence of its employees, agents or contractors, and Tenant hereby waives all claims in respect thereof against Landlord, its employees, agents and contractors.

21. **LANDLORD'S LIABILITY.** Tenant acknowledges that Landlord shall have the right to transfer all or any portion of its interest in the Project and to assign this Lease to the transferee. Tenant agrees that in the event of such a transfer Landlord shall automatically be released from all lability under this Lease to the extent the same arises after the date of such transfer, and Tenant hereby agrees to look solely to Landlord's transferee for the performance of Landlord's obligations hereunder after the date of the transfer. Upon such a transfer, Landlord shall, at its option, return Tenant's security deposit to Tenant or transfer Tenant's security deposit to Landlord's transferee and, in either event, Landlord shall have no further liability to Tenant for the return of its security deposit. Subject to the rights of any lender holding a mortgage or deed of trust encumbering all or part of the Project, Tenant agrees to look solely to Landlord's equity interest in the Project for the collection of any judgment requiring the payment of money by Landlord arising out of (a) Landlord's failure to perform its obligations under this Lease or (b) the negligence or willful misconduct of Landlord, its partners, employees and agents. No other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of any judgment or writ obtained by Tenant against Landlord. No partner, employee or agent of Landlord shall be personally liable for the performance of Landlord's obligations hereunder or be named as a party in any lawsuit arising out of or related to, directly or indirectly, this Lease and the obligations of Landlord hereunder. The obligations under this Lease do not constitute personal obligations of the individual partners of Landlord, if any, and Tenant shall not seek recourse against the individual partners of Landlord or their assets.

22. **SIGNS.** Subject to sections 2 and 3 of the Addendum, Tenant shall be allowed to install building and monument signage to advertise its business at its sole expense. Said signage shall comply with all applicable municipal codes and building/project standards. Otherwise, Tenant shall not make

any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners or painting, or erect or install any signs, windows or door lettering, plakcards, decorations or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. Upon vacation of the Premises, Tenant shall remove all signs and repair, paint and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for signs and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements.

23. **PARKING.** During the term and subject to the rules and regulations attached hereto as Exhibit "C," as modified by Landlord from time to time (the "Rules"), Tenant shall be entitled to use the number of parking spaces set forth in section 1.13 in the Common Area parking lot of the Project. Tenant's parking rights are in common with the parking rights of any other tenants of the Project, and all of Tenant's parking spaces are unreserved parking spaces. Landlord reserves the right at any time to designate areas in the Common Areas where Tenant may or may not park (e.g., landlord shall have the right to require Tenant to park solely in the parking spaces that are within the Premises). If Tenant commits or allows in the parking lot any of the activities prohibited by the Lease or the Rules, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable by Tenant upon demand by Landlord. Tenant's parking rights are the personal rights of Tenant, and Tenant shall not transfer, assign or otherwise convey its parking rights separate and apart from this Lease. All parking spaces may only be used for parking vehicles no larger than full-size passenger automobiles or pick-up trucks. Landlord, in addition to its other remedies, shall have the right to remove or tow away any other vehicles. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties provided, however, if another tenant is interfering with Tenant's parking rights, Landlord shall cooperate with Tenant in attempting to cause the tenant to end such interference, provided, further, that Landlord shall have no obligation to bring a legal action against the non-complying tenant. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities.

24. **BROKER'S FEE.** Tenant and Landlord each represent and warrant to the other that neither has had any dealings or entered into any agreements with any person, entity, broker or finder other than the persons, if any, listed in section 1.14 in connection with the negotiation of this Lease, and no other broker, person, or entity is entitled to any commission or finder's fee in connection with the negotiation of this Lease, and Tenant and Landlord each agree to indemnify, defend and hold the other harmless from and against any claims, damages, costs, expenses, attorneys' fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings, actions or agreements of the indemnifying party. The commission payable to Landlord's broker with respect to this Lease shall be pursuant to the terms of the separate commission agreement in effect between Landlord and Landlord's broker. Landlord's broker shall pay a portion of its commission to Tenant's broker, if so provided in any agreement between Landlord's broker and Tenant's broker. Nothing in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's broker.

25. ESTOPPEL CERTIFICATE

25.1 ***Delivery of Certificate.*** Tenant shall from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying such information as Landlord may reasonably request including, but not limited to, the following: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (b) the date to which the Base Rent and other charges are paid in advance and the amounts so payable, (c) that there are not, to Tenant's knowledge, any uncured defaults or unfulfilled obligations on the part of Landlord, or specifying such defaults or unfulfilled obligations, if any are claimed, (d) that all tenant improvements to be constructed by Landlord, if any, have been completed in accordance with Landlord's obligations, and (e) that Tenant has taken possession of the Premises. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Project.

25.2 ***Failure to Deliver Certificate.*** At Landlord's option, the failure of Tenant to deliver such statement within such time shall constitute a default of Tenant hereunder, or it shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance, (c) not more than one month's Base Rent has been paid in advance, (d) all tenant improvements to be constructed by Landlord, if any, have been completed in accordance with Landlord's obligations, and (e) Tenant has taken possession of the Premises.

26. FINANCIAL INFORMATION. From time to time, at Landlord's request, but not more often than once in any twelve-month period, Tenant shall cause the following financial information to be delivered to Landlord, at Tenant's sole cost and expense, upon not less than ten (10) days' advance written notice from Landlord: (a) a current financial statement for Tenant and Tenant's financial statements for the previous two accounting years, (b) a current financial statement for any guarantor(s) of this Lease and the guarantor'(s) financial statements for the previous two accounting years and (c) such other financial information pertaining to Tenant or any guarantor as Landlord or any lender or purchaser of Landlord may reasonably request. All financial statements shall be prepared in accordance with generally accepted accounting principals consistently applied and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Tenant hereby authorizes Landlord, from time to time, without notice to Tenant, to obtain a credit report or credit history on Tenant from any credit reporting company.

27. ENVIRONMENTAL MATTERS/HAZARDOUS MATERIALS

27.1 ***Hazardous Materials Disclosure Certificate.*** Prior to executing this Lease, Tenant has delivered to Landlord Tenant's executed initial Hazardous Materials Disclosure Certificate (the "Initial HazMat Certificate"), a copy of which is attached hereto as Exhibit D. Tenant covenants, represents and warrants to Landlord that the information in the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall, commencing with the date which is one year from the Commencement Date and continuing every year thereafter, deliver to Landlord an executed Hazardous Materials Disclosure Certifice (the "HazMat Certificate") describing Tenant's then-present use of Hazardous Materials on the Premises, and any other reasonably necessary documents and information as requested by Landlord. The HazMat Certificates required hereunder shall be in substantially the form attached hereto as Exhibit D.

27.2 ***Definition of Hazardous Materials.*** As used in this Lease, the term Hazardous Materials shall mean and include (a) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws (defined below); (b) petroleum, petroleum by-products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead and lead-containing materials; (g) any other material, waste or substance displaying toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law; or (h) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Project or any surrounding property; or pose or threaten to pose a hazard to the health and safety of persons on the Premises, any other portion of the Project or any surrounding property. For purposes of this Lease, the term "Hazardous Materials" shall not include nominal amounts of ordinary household cleaners, office supplies and janitorial supplies which are not actionable under any Environmental Laws.

27.3 ***Prohibition; Environmental Laws.*** Subject to all of the terms and conditions of this section 27.3, Tenant shall be entitled to use in the Premises the Hazardous Materials disclosed on the HazMat Certificate attached to this Lease in the manner and in the amounts specified on the HazMat Certificate. Tenant shall not be entitled to use or store any Hazardous Materials on, in, or about any portion of the Premises and the Project that are not disclosed on the HazMat Certificate without, in each instance, obtaining Landlord's prior written consent thereto, which may be given or withheld in Landlord's sole discretion. Any such usage and storage may only be to the extent of the quantities of Hazardous Materials as specified in the then-applicable HazMat Certificate as expressly approved by Landlord. In all events such usage and storage must at all times be in full compliance with any and all local, state and federal environmental, health and/or safety-related laws, statutes, orders, standards, courts, decisions, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Tenant or all or any portion of the Premises (collectively, the "Environmental Laws") and in compliance with the recommendations of Landlord's consultants. Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent HazMat Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld In Landlord's sole discretion. Landlord shall have the right, in Landlord's sole discretion, at all times during the Term of this Lease to (i) inspect the Premises, (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this section 27 or to determine if Hazardous Materials are present in, on or about the Project, (iii) request lists of all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Areas, and (iv) to require Tenant to complete a survey of its use, storage and handling of Hazardous Materials in the Premises, using a form and following procedures designated by Landlord, in Landlord's sole discretion (the "Survey"). Tenant shall reimburse Landlord for the cost of all such inspections, tests and investigations, and all costs associated with any Survey if it is determined that Tenant is not in compliance with its obligations under this section 27. If as a result of an inspection, test or Survey Landlord determines, in Landlord's sole discretion, that Tenant should implement or perform safety, security or compliance measures, Tenant shall within thirty (30) days after written request by Landlord perform such measures, at Tenant's sole cost and expense. The

aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises or the activities of Tenant and Tenant Parties with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation relating thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

27.4 ***Tenant's Environmental Obligations.*** Tenant shall give to Landlord immediate verbal and follow-up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises or in any Common Areas; provided that Tenant has actual, implied or constructive knowledge of such event(s). Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate ("including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal, emission, migration or transportation of Hazardous Materials arising from or related to the intentional or negligent acts or omissions of Tenant or Tenant Parties such that the affected portions of the Project and any adjacent property are returned to the condition existing prior to the appearance of such Hazardous Materials. Any such investigation, clean up, removal, restoration and other restoration shall only be performed after Tenant has obtained Landlord's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the Project. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Tenant fails to so promptly investigate, clean up, remove, restore, provide closure or otherwise so remediate, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same, and Tenant shall promptly reimburse Landlord, upon demand, for all costs and expenses to Landlord of performing investigation, cleanup, removal, restoration, closure and remediation work. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises and other portions of the Project after the satisfactory completion of such work.

27.5 ***Environmental Indemnity.*** In addition to Tenant's other indemnity obligations under this Lease, Tenant agrees to, and shall, protect, indemnify, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, diminution in value of any portion of the Premises or the Project, damages for the loss of or restriction on the use of rentable or usable space, and from any adverse impact of Landlord's marketing of any space within the Project) arising at any time during or after the term of this Lease in connection with or related to, directly or indirectly, the use, presence, transportation, storage, disposal, migration, removal, spill, release or discharge of Hazardous Materials on, in or about any portion of the Project as a result (directly or indiredty) of the intentional or negligent acts or omissions of Tenant or Tenant Parties. Neither the written consent of Landlord to the presence, use or storage of Hazardous Materials in, on, under or about any portion of the Project nor the strict compliance by Tenant with all Environmental Laws shall excuse Tenant from its obligations of indemnification pursuant hereto. Tenant shall not be relieved of its indemnification obligations under the provisions of this section 27.5 due to Landlord's status as either an "owner" or "operator" under any Environmental Laws.

27.6 ***Survival.*** Tenant's obligations and liabilities pursuant to the provisions of this section 27 shall survive the expiration or earlier termination of this Lease. If it is determined by Landlord that the condition of all or any portion of the Project is not in compliance with the provisions of this Lease with respect to Hazardous Materials, including without limitation, all Environmental Laws at the expiration or earlier termination of this Lease, then Landlord may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Landlord in the condition in which the Premises existed as of the Commencement Date and prior to the appearance of such Hazardous Materials except for reasonable wear and tear, including without limitation, the conduct or performance of any closures as required by any Environmental Laws. The burden of proof hereunder shall be upon Tenant. For purposes hereof, the term "reasonable wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Project in any manner whatsoever related to, directly or indirectly, Hazardous Materials. Any such holdover by Tenant will be with Landlord's consent, will not be terminable by Tenant in any event or circumstance and will otherwise be subject to the provisions of section 33 of this Lease.

27.7 ***No Liability for Acts of Others.*** Notwithstanding anything to the contrary contained in this Lease, Tenant shall only be liable pursuant to this section 27 for the acts of Tenant and Tenant Parties, and Tenant shall not be liable for the acts of persons or entities other than Tenant and Tenant Parties nor shall Tenant be responsible or liable for contamination that existed at the Premises on the Commencement Date or for contamination emanating from neighboring land.

28. SUBORDINATION

28.1 ***Effect of Subordination.*** This Lease, and any Option (as defined below) granted hereby, upon Landlord's written election, shall be subject and subordinate to any ground lease, mortgage, deed of trust or any other hypothecation or security now or hereafter placed upon the Project and to any and all advances made on the security thereof and to all renewals, modification, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. At the request of any mortgage, trustee or ground lessor, Tenant shall attorn to such person or entity. If any mortgagee, trustee or ground lessor shall elect to have this Lease and any Options granted hereby prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease and such Options shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease or such Options are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof. In the event of the foreclosure of a security device, the new owner shall not (a) be liable for any act or omission of any prior landlord or with respect to events occurring prior to its acquisition of title, (b) be liable for the breach of this Lease by any prior landlord, (c) be subject to any offsets or defenses which Tenant may have against the prior landlord or (d) be liable to Tenant for the return of its security deposit.

28.2 ***Execution of Documents.*** Tenant agrees to execute and acknowledge any documents Landlord reasonably requests Tenant execute to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a default by Tenant hereunder.

29. OPTIONS

29.1 ***Definition.*** As used in this Lease, the word "Option" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease, (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other space within the Project or the right of first offer to lease other space within the Project, and (3) the right or option to terminate this Lease prior to its expiration date or to reduce the size of the Premises. Any Option granted to Tenant by Landlord must be evidenced by a written option agreement attached to this Lease as a rider or addendum or said option shall be of no force or effect.

29.2 ***Options Personal.*** Each Option granted to Tenant in this Lease, if any, is personal to the original Tenant and any Affiliate (as defined in 18.8) to whom Tenant assigns its interest in this Lease (an "Assuming Affiliate") and may be exercised only by the original Tenant or an Assuming Affiliate while occupying the entire Premises and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant or an Assuming Affiliate, including, without limitation, any permitted transferee as defined in section 16. The Options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise. If at any time an Option is exercisable by Tenant or an Assuming Affiliate, the Lease has been assigned to a person or entity other than an Affiliate or a sublease exists as to any portion of the Premises to a person or entity other than an Affiliate, the Option shall be deemed null and void and neither Tenant nor any assignee or subtenant shall have the right to exercise the Option.

29.3 ***Multiple Options.*** In the event that Tenant has multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Option to extend or renew this Lease has been so exercised.

29.4 ***Effect of Default on Options.*** Tenant shall have no right to exercise an Option (i) during the time commencing from the date Landlord gives to Tenant a notice of default pursuant to section 17.1 and continuing until the noncompliance alleged in said notice of default is cured, or (ii) if Tenant is in default of any of the terms, covenants or conditions of this Lease. The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise an Option because of the provisions of this section.

29.5 ***Limitation on Options.*** Notwithstanding anything to the contrary contained in any rider or addendum to this Lease, any options, rights of first refusal or rights of first offer granted hereunder shall be subject and secondary to Landlord's right of first offer and lease any such space to any tenant who is then occupying or leasing such space at the time the space becomes available for leasing and shall be subject and subordinated to any other options, rights of first refusal or rights of first offer previously given to any other person or entity.

29.6 ***Guarantees.*** Notwithstanding anything to the contrary contained in any rider or addendum to this Lease, Tenant's right to exercise and the effectiveness of an Option is conditioned upon Landlord's receipt from any prior tenant that has not been expressly released from liability under this Lease, and any guarantor of any obligation of Tenant under this Lease, of a written agreement reaffirming such person's obligations under this Lease or the guaranty, as modified by Tenant's exercise of the Option.

30. LANDLORD RESERVATIONS. Landlord shall have the right: (a) to change the name and address of the Project or Building upon not less than ninety (90) days prior written notice; provided, however, in such event Landlord shall reimburse Tenant for all reasonable costs Tenant pays to third parties for the replacement of pre-printed stationery, address labels and other

packaging in an amount not to exceed $5000; (b) to permit any tenant the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and (c) to place signs, notices or displays upon the roof, interior or exterior of the Building or Common Areas of the Project. Landlord reserves the right to use the exterior walls of the Premises, and the area beneath, adjacent to and above the Premises together with the right to install, use, maintain and replace equipment, machinery, pipes, conduits and wiring through the Premises, which serve other parts of the Project provided that Landlord's use does not unreasonably interfere with Tenant's use of the Premises.

31. **CHANGES TO PROJECT.** Landlord shall have the right, in Landlord's sole discretion, from time to time, to make changes to the size, shape, location, number and extent of the improvements comprising the Project (hereinafter referred to as "Changes") including, but not limited to, the interior and exterior of buildings, the Common Ardeas, HVAC, electrical systems, communication systems, fire protection and detection systems, plumbing systems, security systems, parking control systems, driveways, entrances, parking spaces, parking areas and landscaped areas; provided, however, that Landlord shall not materially change the location of the exterior walls of the Building or materially change the location of the Common Areas within the Building in a way that would materially and adversely effect Tenant's use of the Premises without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with the Changes, Landlord may, among other things, erect scaffolding or other necessary structures at the Project, limit or eliminate access to portions of the Project, including portions of the Common Areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Changes and Landlord's actions in connection with such Changes shall in no way constitute a constructive eviction of Tenant or entitle Tenant to any abatement of rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Changes, nor shall Tenant be entitled to any compensation or damages from Landlord for any inconvenience or annoyance occasioned by such Changes or Landlord's action in connection with such Changes. If a Change will materially interfere with Tenant's use of the Premises, Landlord shall use commercially reasonable efforts to provide Tenant with advance notice of such Change. Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's business operations caused by Changes.

32. **INTENTIONALLY DELETED.**

33. **HOLDING OVER.** If Tenant remains in possession of the Premises or any part thereof after the expiration or earlier termination of the term hereof with Landlord's consent, such occupancy shall be a tenancy from month to month upon all the terms and conditions of this Lease pertaining to the obligations of Tenant, except that the Base Rent payable shall be the one hundred fifty percent (150%) of the Base Rent payable immediately preceding the termination date of this Lease, and all Options, if any, shall be deemed terminated and be of no further effect. If Tenant remains in possession of the Premises or any part thereof, after the expiration of the term hereof without Landlord's consent, Tenant shall, at Landlord's option, be treated as a tenant at sufferance or a trespasser. Nothing contained herein shall be construed to constitute Landlord's consent to Tenant holding over at the expiration or earlier termination of the Lease term or to give Tenant the right to hold over after the expiration or earlier termination of the Lease term. Tenant hereby agrees to indemnify, hold harmless and defend Landlord from any cost, loss, claim or liability (including attorneys' fees) Landlord may incur as a result of Tenant's failure to surrender possession of the Premises to Landlord upon the termination of this Lease.

34. LANDLORD'S ACCESS

34.1 ***Access.*** Landlord and Landlord's agents, contractors and employees shall have the right to enter the Premises at reasonable times upon reasonable advance notice (at least 24 hours telephonic notice) to Tenant (except in the case of any emergency, where no advance notice shall be required) for the purpose of inspecting the Premises, performing any services required of Landlord, showing the Premises to prospective purchases, lenders or tenants, undertaking safety measures and making alterations, repairs, improvements or additions to the Premises or to the Project; provided, however, that Landlord shall only have the right to show the Premises to prospective tenants during the last one hundred eighty (180) days of the term of this Lease. In the event of an emergency, Landlord may gain access to the Premises by any reasonable means, and Landlord shall not be liable to Tenant for damage to the Premises or to Tenant's property resulting from such access. Landlord may at any time place on or about the Building "for sale" or "for lease" signs and Landlord may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises "for lease" signs.

34.2 ***Keys.*** Landlord shall have the right to retain keys to the locks on the entry doors to the cPremises and all interior doors at the Premises.

35. **SECURITY MEASURES.** Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project, and Landlord shall have no liability to Tenant due to its failure to provide such services. Tenant assumes all responsibility for the protection of Tenant, its agents, employees, contractors and invitees and the property of Tenant and of Tenant's agents, employees, contractors and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from implementing security measures for the Project or any part thereof, in which event Tenant shall participate in such security measures and the cost thereof shall be included within the definition of Operating Expenses, and Landlord shall have no liability to Tenant and its agents, employees, contractors and invitees arising out of Landlord's negligent provision of security measures. Landlord shall have the right, but not the obligation, to require all persons entering or leaving the Project to identify themselves to a security guard and to reasonably establish that such person should be permitted access to the Project.

36 **EASEMENTS.** Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents within ten (10) days after Landlord's request, and Tenant's failure to do so shall constitute a default by Tenant. The obstruction of Tenant's view, air or light by any structure erected in the vicinity of the Project, whether by Landlord or third parties, shall in no way affect this Lease or impose any liability upon Landlord.

37 **TRANSPORTATION MANAGEMENT.** Tenant shall fully comply at its sole expense with all present or future programs implemented or required by any governmental or quasi-governmental entity or Landlord to manage parking, transportation, air pollution or traffic in and around the Project or the metropolitan area in which the Project is located.

38 **SEVERABILITY.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

39 **TIME OF ESSENCE.** Time is of the essence with respect to each of the obligations to be performed by Tenant and Landlord under this Lease.

40 **DEFINITION OF ADDITIONAL RENT.** All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to, Base Rent, Tenant's Percentage Share of Operating Expenses and late charges shall be deemed to be rent.

41 **INCORPORATION OF PRIOR AGREEMENTS.** This Lease and the attachments listed in section 1.15 contain all agreements of the parties with respect to the lease of the Premises and any other matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker nor Landlord nor any employee or agents of any of said persons has made any oral or written warranties or representations to Tenant concerning the condition or use by Tenant of the Premises or the Project or concerning any other matter addressed by this Lease.

42 **AMENDMENTS.** This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

43 **NOTICES.** All notices required or permitted by this Lease shall be in writing and may be delivered (a) in person (by hand, by messenger or by courier service), (b) by U.S. Postal Service regular mail, (c) by U.S. Postal Service certified mail, return receipt requested, (d) by U.S. Postal Service Express Mail, Federal Express or other overnight courier, or (e) by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this section. The addresses set forth in section 1.16 of this Lease shall be the address of each party for notice purposes. Landlord or Tenant may by written notice to the other specify a different address for notice purposes, except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereinafter designate by written notice to Tenant. Any notice sent by regular mail or by certified mail, return receipt requested, shall be deemed given three (3) days after deposited with the U.S. Postal Service. Notices delivered by U.S. Express Mail, Federal Express or other courier shall be deemed given on the date delivered by the carrier to the appropriate party's address for notice purposes. If any notice is transmitted by facsimile transmission, the notice shall be deemed delivered upon telephone confirmation of receipt of the transmission thereof at the appropriate party's address for notice purposes. A copy of all notices delivered to a party by facsimile transmission shall also be mailed to the party on the date the facsimile transmission is completed. If notice is received on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day. Nothing contained herein shall be construed to limit Landlord's right to serve any notice to pay rent or quit or similar notice by any method permitted by applicable law, and any such notice shall be effective if served in accordance with any method permitted by applicable law whether or not the requirements of this section have been met.

44 **WAIVERS.** No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Landlord or Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No acceptance by Landlord of partial payment of any sum due from Tenant shall be deemed a waiver by landlord of its right to receive the full amount due, nor shall any endorsement or statement on any check or accompanying letter from Tenant be deemed an accord and satisfaction. Tenant hereby waives California Code of Civil Procedure section 1179 and Civil Code section 3275 which allow tenants to obtain relief from the forfeiture of a lease. Tenant hereby

waives for Tenant and all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by legal process or writ Tenant's right of occupancy of the Premises after any termination of this Lease.

45 **COVENANTS.** This Lease shall be construed as though Landlord's covenants contained herein are independent and not dependent and Tenant hereby waives the benefit of any statute to the contrary. All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions.

46 **BINDING EFFECT; CHOICE OF LAW.** Subject to any provision hereof restricting assignment or subletting by Tenant, this Lease shall bind the parties, their heirs, personal representatives, successors and assigns. This Lease shall be governed by the laws of the state in which the Project is located, and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Project is located.

47 **ATTORNEYS' FEES.** If Landlord or Tenant brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees and court costs reasonably incurred in good faith. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default. Landlord and Tenant agree that attorneys' fees incurred with respect to defaults and bankruptcy are actual pecuniary losses within the meaning of section 365(b)(1)(B) of the Bankruptcy Code or any successor statute.

48 **AUCTIONS.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction or going-out-of-business sale upon the Premises or the Common Areas.

49 **MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not result in the merger of Landlord's and Tenant's estates and shall, at the option of the Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

50 **QUIET POSSESSION.** Subject to the other terms and conditions of this Lease, and the rights of any lender, and provided Tenant is not in default hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

51 **AUTHORITY.** If Tenant is a corporation, trust, limited liability company, limited liability partnership or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity, represents and warrants that such individual is duly authorized to execute and deliver this Lease on behalf of said entity, that said entity is duly authorized to enter into this Lease, and that this Lease is enforceable against said entity in accordance with its terms. If Tenant is a corporation, trust, limited liability company, limited liability partnership or other partnership, Tenant shall deliver to Landlord upon demand evidence of such authority satisfactory to Landlord.

52 **CONFLICT.** Except as otherwise provided herein to the contrary, any conflict between the printed provisions, exhibits, addenda or riders of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

53 **MULTIPLE PARTIES.** If more than one person or entity is named as Tenant herein, the obligations of Tenant shall be the joint and several responsibility of all persons or entities named herein as

Tenant. Service of a notice in accordance with section 43 on one Tenant shall be deemed service of notice on all Tenants.

54 **INTERPRETATION.** This Lease shall be interpreted as if it was prepared by both parties, and ambiguities shall not be resolved in favor of Tenant because all or a portion of this Lease was prepared by Landlord. The captions contained in this Lease are for convenience only and shall not be deemed to limit or alter the meaning of this Lease. As used in this Lease, the words tenant and landlord include the plural as well as the singular. Words used in the neuter gender include the masculine and feminine gender.

55 **PROHIBITION AGAINST RECORDING.** Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant. Landlord shall have the right to record a memorandum of this Lease, and Tenant shall execute, acknowledge and deliver to Landlord for recording any memorandum prepared by Landlord.

56 **RELATIONSHIP OF PARTIES.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Landlord and Tenant.

57 **RULES AND REGULATIONS.** Tenant agrees to abide by and conform to the Rules and to cause its employees, suppliers, customers and invitees to so abide and conform. Landlord shall have the right, from time to time, to modify, amend and enforce the Rules in a nondiscriminatory manner. Landlord shall not be responsible to Tenant for the failure of other persons, including, but not limited to, other tenants, their agents, employees and invitees, to comply with the Rules. Modifications or amendments to the Rules shall be binding upon Tenant provided that Tenant has received written notice thereof.

58 **RIGHT TO LEASE.** Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in its sole discretion shall determine, and Tenant is not relying on any representation that any specific tenant or number of tenants will occupy the Project.

59 **CONFIDENTIALITY.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms hereof could adversely affect the liability of Landlord to negotiate other leases with respect to the Project and may impair Landlord's relationship with other tenants of the Project. Tenant agrees that it and its partners, officers, directors and employees shall use commercially reasonable efforts not disclose the terms of this Lease to any person or entity except (a) the brokers, attorneys and accountants employed by Tenant who are involved in this transaction and (b) as required in any legal proceeding or in connection with any other mandatory disclosure obligation of Tenant, without the prior written consent of Landlord, which may be given or withheld by Landlord, in Landlord's sole discretion. Tenant shall instruct its brokers, attorneys and accountants to maintain the confidentiality of the terms of this Lease. It is understood and agreed that damages alone would be inadequate remedy for the breach of this provision by Tenant, and Landlord shall also have the right to seek specific performance of this provision and to seek injunctive relief to prevent its breach or continued breach.

60 **WAIVER OF JURY TRIAL.** LANDLORD AND TENANT HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRAIL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER LANDLORD AGAINST TENANT OR TENANT AGAINST LANDLORD ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF

INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

LANDLORD AND TENANT ACKNOWLEDGE THAT THEY HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES. TENANT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE THIS LEASE REVIEWED BY ITS LEGAL COUNSEL PRIOR TO ITS EXECUTION. PREPARATION OF THIS LEASE BY LANDLORD OR LANDLORD'S AGENT AND SUBMISSION OF SAME TO TENANT SHALL NOT BE DEEMED AN OFFER BY LANDLORD TO LEASE THE PREMISES TO TENANT OR THE GRANT OF AN OPTION TO TENANT TO LEASE THE PREMISES. THIS LEASE SHALL BECOME BINDING UPON LANDLORD ONLY WHEN FULLY EXECUTED BY BOTH PARTIES AND WHEN LANDLORD HAS DELIVERED A FULLY EXECUTED ORIGINAL OF THIS LEASE TO TENANT.

LANDLORD:

The Realty Associates Fund III, L.P., a Delaware limited partnership

By: Realty Associates Fund III GP Limited Partnership, a Delaware limited partnership, its general partner

By: Realty Associates Fund III LLC, a Delaware limited liability company, its sole general partner

By: Realty Associates Fund III Trust, a Massachusetts business trust, sole Member

By: /s/ SCOTT W. AMLING

(Officer) Scott W. Amling
Regional Director

By: Realty Associates Fund III Texas Corporation, a Texas corporation, general partner

By: /s/ SCOTT W. AMLING

(Officer) Scott W. Amling
Regional Director

TENANT(1):

Accuray Incorporated, a California corporation

By: /s/ CHRIS A. RAANES

Chris A. Raanes
(print name)

Its: Chief Operating Officer
(print title)

By: /s/ ROBERT E. MCNAMARA

Robert E. McNamara
(print name)

Its: Chief Operating Officer
(print title)

(1) If Tenant is a corporation, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

EXHIBIT A

PREMISES

Exhibit A is intended only to show the general layout of the Premises, and shall not be interpreted to increase the size of the Premises beyond the number of leasable square feet set forth in section 1.5. Exhibit A is not to be scaled and any measurements or distances shown on Exhibit A are approximates only.

[to be attached]

EXHIBIT A

[PREMISES MAP OMITTED]

EXHIBIT B

Intentionally deleted.

EXHIBIT C

RULES AND REGULATIONS

GENERAL RULES

Tenant shall faithfully observe and comply with the following Rules and Regulations:

1. Tenant shall not alter any locks or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant.

2. Access to the Project may be refused unless the person seeking access has proper identification or has a previously received authorization for access to the Project. Landlord and its agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Project of any person. In case of invasion, mob, riot, public excitement or other commotion, Landlord reserves the right to prevent access to the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

3. No cooking shall be done or permitted on the Premises, nor shall the Premises be used for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' Laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors of Tenant, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations; and provided further that such cooking does not result in odors escaping from the Premises.

4. No boring or cutting for wires shall be allowed without the consent of Landlord. Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with broadcasting or reception from or in the Project or elsewhere.

5. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

6. Tenant shall store all its trash and garbage within the interior of the Premises or in other locations approved by Landlord, in Landlord's sole discretion. No material shall be placed in the trash boxes or receptacles if such materials is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash in the vicinity of the Project without violation of any law or ordinance governing such disposal.

7. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

PARKING RULES

1. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities and at times approved by Landlord. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking. Tenant and its customers, employees, shippers and invitees shall comply with all rules and regulations adopted by Landlord from time to time relating to truck parking and/or truck loading and unloading.

2. Landlord reserves the right to relocate all or a part of parking spaces within the parking area.

3. Landlord will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.

4. The maintenance, washing, waxing or cleaning or vehicles in the parking area or Common Areas is prohibited.

5. Tenant shall be responsible for seeing that all of its employees, agents, contractors and invitees comply with the applicable parking rules, regulations, laws and agreements.

6. At Landlord's request, Tenant shall provide Landlord with a list which includes the name of each person using the parking facilities based on Tenant's parking rights under this Lease and the license plate number of the vehicle being used by that person. Tenant shall provide Landlord with an updated list within five (5) days after any part of the list becomes inaccurate.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein; provided, however, any new rule that will materially and adversely interfere with Tenant's business operations (as they exist on the Commencement Date) shall require Tenant's prior written consent (such consent not to be unreasonably withheld). Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant, but not such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT D

Form of HazMat Certificate

General Information

Name of Responding Company: Accuray Inc.

Mailing Address: 1310 Chesapeake Terrace, Sunnyvale, CA 94089

Signature: (Steve Strunk)

Title: Director of Manufacturing Phone: (408) 716-4795

Date: 6/30/05 Age of Facility: 24 years Length of Occupancy: New Tenant

Major products manufactured and/or activities conducted on the property: Manufactures and sells stereotactic radiosurgery systems together with related service and parts.

Type of Business Activity(ies):
(check all that apply)

- ____ machine shop
- ____ light assembly
- _x_ research and development
- _x_ product service or repair
- ____ photo processing
- ____ automotive service and repair
- _x_ Manufacturing
- ____ Warehouse
- ____ integrated/printed circuit
- ____ chemical/pharmaceutical product

Hazardous Materials Activities:
(check all that apply)

- ____ degreasing
- ____ chemical/etching/milling
- ____ wastewater treatment
- ____ painting
- ____ striping
- ____ cleaning
- ____ printing
- ____ analytical lab
- ____ plating
- ____ chemical/missing/synthesis
- ____ silkscreen
- ____ lathe/mill machining
- ____ deionizer water product
- ____ photo masking
- ____ wave solder
- ____ metal finishing

HAZARDOUS MATERIALS/WASTE HANDLING AND STORAGE

A. Are hazardous materials handled on any of your shipping and receiving docks in container quantities greater than one gallon? __x__ Yes _____ No

B. If Hazardous materials or waste are stored on the premises, please check off the nature of the storage and type(s) of materials below:

Types of Storage Container Stored (list above-ground storage only)		Type of Hazardous Materials and/or Waste	
__x__	1 gallon or 3 liter bottles/cans	__x__	acid
__x__	5 to 30 gallon carboys	_____	phenol
__x__	55 gallon drums	_____	caustic/alkaline cleaner
_____	Tanks	_____	cyanide
		_____	photo resist stripper
		__x__	paint
		__x__	flammable solvent
		_____	gasoline/diesel fuel
		__x__	nonflammable/chlorinated solvent
		__x__	oil/cutting fluid

C. Do you accumulate hazardous waste onsite? __x__ Yes _____ No

If yes, how is it being handled?

_____ on-site treatment or recovery
_____ discharged to sewer
__x__ hauled offsite — If hauled offsite, by whom __Romic__
_____ Incineration

D. Indicate your hazardous waste storage status with Department of Health Services

__x__ Generator
_____ interim status facility
_____ permitted TSDF
_____ none of the above

WASTEWATER TREATMENT/DISCHARGE

A. Do you discharge industrial wastewater to:

____ Sewer
____ storm drain
____ surface water
__x__ no industrial discharge

B. Is your industrial wastewater treated before discharge? ____ Yes ____ No (Not Applicable—No Industrial Discharge)

If yes, what type of treatment is being conducted?

____ Neutralization
____ metal hydroxide formation
____ closed-loop treatment
____ cyanide destruct
____ HF treatment
____ Other

SUBSURFACE OF CONTAINMENT OF HAZARDOUS MATERIALS/WASTES

A. Are buried tanks/sumps being used for any of the following:

(Not applicable—No Subsurface Containment of Hazardous Materials/Wastes)

____ hazardous waste storage
____ chemical storage
____ gasoline/diesel fuel storage
____ waste treatment
____ wastewater neutralization
____ industrial wastewater treatment
____ none of the above

B. If buried tanks are located onsite, indicate their construction:

(Not Applicable—No Subsurface Containment of Hazardous Materials/Wastes)

____ Steel ____ fiberglass ____ concrete
____ inside open vault ____ double walled

C. Are hazardous materials or untreated industrial wastewater transported via buried piping to tanks, process areas or treatment areas? ____ Yes ____ No

(Not Applicable—No Subsurface Containment of Hazardous Materials/Wastes)

D. Do you have wet floors in your process areas? ____ Yes ____ No

(Not Applicable—No Subsurface Containment of Hazardous Materials/Wastes)

If yes, name processes: _____

E. Are abandoned underground tanks or sumps located on the property? _____ Yes _____ No

(Not Applicable—No Subsurface Containment of Hazardous Materials/Wastes)

HAZARDOUS MATERIALS SPILLS

A. Have hazardous materials ever spilled to:

_____ Sewer
_____ the storm drain
_____ onto the property
__x__ no spills have occurred

B. Have you experienced any leaking underground tanks or sumps? _____ Yes __x__ No (New Tenant)

C. If spills have occurred, were they reported? _____ Yes _____ No

Check which the government agencies that you contacted regarding the spill(s):

_____ Department of Health Services
_____ Department of Fish and Game
_____ Environmental Protection Agency
_____ Regional Water Quality Control Board
_____ Fire Department

D. Have you been contacted by a government agency regarding soil or groundwater contamination on your site? _____ Yes __X__ No

Do you have exploratory wells onsite? _____ Yes __x__ No

If yes, indicate the following:

Number of wells: _____ Approximate depth of wells: _____ Well diameters:_____

PLEASE ATTACH ENVIRONMENTAL REGULATORY PERMITS, AGENCY REPORTS THAT APPLY TO YOUR OPERATION AND HAZARDOUS WASTE MANIFESTS.

Check off those enclosed: (Not at this Time. HMIS, HMMP and Hazardous Waste Manifest will soon be available.)

_____ Hazardous Materials Inventory Statement, HMIS
_____ Hazardous Materials Management Plan, HMMP
_____ Department of Health Services, Generatory Inspection Report
_____ Underground Tank Registrations
_____ Industrial Wastewater Discharge Permit
_____ Hazardous Waste Manifest

EXHIBIT E

WORK LETTER AGREEMENT

This Work Letter Agreement is attached to a Standard Industrial Lease entered into between The Realty Associates Fund III, L.P. ("*Landlord*"), and Accuray Incorporated ("*Tenant*") (the "*Lease*") covering certain premises (the "*Premises*") more particularly described in the Lease, and is incorporated into the Lease by this reference.

1. *Tenant Improvements.* For purposes of this Lease, the "Tenant Improvements" shall mean the improvements to the Premises described on the Final Construction Drawings (as defined below). All Tenant Improvements made to the Premises shall be performed by Tenant. Subject to the reimbursement limitations set forth in section 2.2 below, the Tenant Improvements shall be paid for from the Tenant Improvement Allowance (as defined below) or shall be paid for by Tenant, at Tenant's sole cost and expense. The Tenant Improvements to be constructed by Tenant shall include, but shall not be limited to, demolition, concrete work, iron work, rough and finish carpentry, insulation, sheet metal, glass and glazing, doors, door frames and hardware, dry wall, acoustical ceiling, flooring, painting and wall coverings, accessories and partitions, kitchen equipment, fire extinguishers and cabinets, window coverings, plumbing, HVAC equipment, relocation of existing and installation of new fire sprinkler heads, electrical, prefabricated partitions, telephone systems, cabling systems, final clean-up and labor, miscellaneous specialties, planning, engineering, plan checking, permitting, architectural and other design costs, general contractor and subcontractor general conditions, overhead and profit, moving and insurance costs. Compliance with the Americans with Disabilities Act and all other handicap regulations relating to the construction of the Tenant Improvements or the use or occupancy of the Premises shall be paid for by Tenant from the Tenant Improvement Allowance or Tenant's own funds.

2. *Tenant Improvement Allowance.*

2.1 *Tenant Improvement Allowance.* Tenant shall be entitled to a Tenant Improvement Allowance (the "*Tenant Improvement Allowance*") in a total amount equal to One Million Dollars ($1,000,000). The Tenant Improvement Allowance shall be used, subject to the limitations set forth in section 2.2 below, to reimburse Tenant for the costs it incurs relating to the initial design and construction of the Tenant Improvements. In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Tenant Improvement Allowance. Any portion of the Tenant Improvement Allowance not disbursed in accordance with this Work Letter Agreement shall be retained by Landlord and shall no longer be available to Tenant for any purpose.

2.2 *Disbursement of the Tenant Improvement Allowance.*

(a) *Tenant Improvement Allowance Items.* The Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively the "*Tenant Improvement Allowance Items*"):

(i) Payment of the fees of the "Architect" and the "Engineers," as those terms are defined in section 3.1 of this Work Letter Agreement;

(ii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

(iii) The cost of the construction of the Tenant Improvements, including without limitation, the cost of constructing four (4) concrete radiation cells; provided, however, in no event shall the Tenant Improvement Allowance be used to pay the cost of computer or telephone wiring or any cost of purchasing furniture, fixture or equipment (collectively, "*FF&E*"), and the cost of all FF&E shall be paid by Tenant, at Tenant's sole expense;

(iv) The cost of any changes to the Final Construction Drawings (as that term is defined in section 3.3 of this Work Letter Agreement) or Tenant Improvements required by any governmental agency; and

(v) Sales and use taxes and Title 24 fees.

(b) *Disbursement.* During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items and shall release monies as follows:

(i) *Disbursements.* Not more often than once in any thirty (30) day period, Landlord shall disburse to Tenant, or upon written request from Tenant, Tenant's general contractor, monies from the Tenant Improvement Allowance. Prior to Landlord making a disbursement, Tenant shall deliver to Landlord: (A) a request for payment, approved by Tenant, in a form which is reasonably acceptable to Landlord which shows the percentage of completion by trade of the Tenant Improvements; (B) invoices from all of Tenant's Agents (as defined below), for labor rendered and materials delivered with respect to such payment request in an amount not less than the amount of the Tenant Improvement Allowance Tenant has requested be reimbursed; (C) copies of executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions of California Civil code Section 3262(d); (D) proof that Tenant has previously paid to Tenant's Agents the monies described in the payment request; and (E) all other information reasonably requested by Landlord. Within fifteen (15) days after Landlord has received all of this information, Landlord shall deliver a check to Tenant or, at Tenant's request, to Tenant's general contractor, in an amount equal to the actual monies paid by Tenant to Tenant's Agents with respect to such payment request. Notwithstanding the foregoing, landlord shall not be obligated to disburse to Tenant the lest ten percent (10%) of the Tenant Improvement Allowance until the requirements of section 2.2(b)(ii) have satisfied and Tenant has received a certificate of occupancy for the Premises.

(ii) *Final Completion.* Within thirty (30) days after the Tenant Improvements have been completed, Tenant shall deliver to Landlord (A) properly executed mechanics lien releases in compliance with California Civil Code Section 3262(d)(3) or Section 3262(d)(4); and (B) a certificate from the Architect, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been substantially completed. Within fifteen (15) days after receiving the foregoing information, Landlord shall reimburse to Tenant any additional costs of constructing the Tenant Improvements to the extent not previously paid for in accordance with (i) above.

3. *Space Plan and Construction Drawings.*

3.1 *Space Plan.* Attached hereto as Exhibit 1 is a space plan describing the improvements Tenant will make to the Premises (the "*Space Plan*"). The Space Plan provides for the construction of six radiation cells, four of which will be built initially, and two of which are hereby approved by Landlord, but may be built by Tenant at a later date.

3.2 *Construction Drawings.* Tenant shall use an architect reasonably acceptable to Landlord to prepare construction drawings for the improvements described on the Space Plan (the "*Architect*"). In addition, Tenant shall retain engineering consultants (the "*Engineers*") that are reasonably acceptable to Landlord to prepare all plans and engineering drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work in the Premises. The plans and specifications to be prepared by Architect and the Engineers hereunder shall reflect only the improvements described on the final Space Plan and shall be known collectively as the "*Construction Drawings*." Tenant and Architect shall verify, in the field, the dimensions of the Premises and the conditions at the Premises, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no

responsibility in connection therewith. Landlord's review of the Construction Drawings are for its sole benefit and Landlord shall have no liability to Tenant or Tenant's Agents arising out of or based on Landlord's review. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant or Tenant's Agents by Landlord or Landlord's space planner, architect, engineers and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors arising therefrom.

3.3 *Preparation of Final Construction Drawings.* Tenant shall promptly cause the Architect and the Engineers to complete the Construction Drawings which shall be comprised of a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which will allow Tenant to obtain all applicable permits (collectively, the "*Final Construction Drawings*") and shall submit three (3) copies of the Final Construction Drawings to Landlord for Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Final Construction Drawings for the Premises if the same are unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall immediately revise the Final Construction Drawings to reflect Landlord's comments.

3.4 *Permits and Changes.* The Final Construction Drawings shall be approved by Landlord commencement of construction of the Tenant Improvements. After approval by Landlord of the Final Construction Drawings, Tenant may submit the same to the City of Sunnyvale in order to obtain all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permits or a certificate of occupancy for the Premises and that obtaining the same shall be Tenant's sole responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permits or certificate of occupancy. No changes, modifications or alterations in the Final Construction Drawings may be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

3.5 *Compliance with Laws.* Tenant shall be solely responsible for constructing the Tenant Improvements in compliance with all laws. Tenant acknowledges and agrees that it may be obligated to modify, alter or upgrade the existing Premises and the systems therein in order to complete the construction of the Tenant Improvements, and Landlord shall have no liability or responsibility for modifying, altering or upgrading the Premises or its existing systems.

4. *Construction of Tenant Improvements.*

4.1 *Tenant's Selection of Contractors.*

(a) *The Contractor.* Tenant shall use a general contractor for the construction of the Tenant Improvements that is reasonably acceptable to Landlord (the "*Contractor*").

(b) *Tenant's Agents.* All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "*Tenant's Agents*") must be licensed by the State of California. All of Tenant's Agents shall be experienced in performing the work they have agreed to perform in similar buildings.

4.2 *Construction of Tenant Improvements by Tenant's Agents.*

(a) *Construction Contract; Cost Budget.* Prior to Tenant's execution of the construction contract with Contractor (the "*Contract*"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld. Landlord shall approve or disapprove the Contract within five (5) business days after Landlord receives the Contract.

(b) *Tenant's Agents.*

(i) *Indemnity.* Tenant's indemnification set forth in the Lease shall also apply with respect to any and all damages, cost, loss or expense (including attorney's fees) related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of an amount arising out of the Tenant Improvements. By way of example, and not limitation, Tenant shall indemnify and defend Landlord from any Damages to the Premises caused by the actions of the persons constructing the Tenant Improvements.

(ii) *Warranty.* Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the Commencement Date of the Lease. The correction of any defective work shall include, without additional charge, all additional expenses and damages incurred in connection with the removal or replacement of all or any part of the Tenant Improvements, and/or any other Building Improvements that may be damaged or disturbed thereby. All such warranties or guarantees shall be contained in the Contract or applicable subcontract and shall inure to the benefit of both Landlord and Tenant. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

(iii) *Insurance Requirements.*

(A) General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant pursuant to section 10 of the Lease. Tenant's Agents shall not be entitled to satisfy their insurance obligations through self-insurance.

(B) *Special Coverages.* Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may reasonably require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant during the construction period and throughout the term of the Lease. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord.

(C) *General Terms.* Certificates for all insurance carried pursuant to this section shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before any equipment is moved onto the site. All such policies of insurance shall name Landlord as an additional insured and must contain a provision that the company writing the policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until all of the Tenant Improvements are fully completed. All insurance, except Worker's Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against Landlord or Tenant. Such insurance shall provide that it is primary insurance as respects Landlord and that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not limit Tenant's indemnification obligations under this Work Letter Agreement.

(c) *Compliance With Laws and Other Landlord Requirements.* The Tenant Improvements shall comply in all respects with the following: (i) all applicable building codes, laws and regulations; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters); and (iii) building material manufacturer's specifications. In addition, Tenant's Agents shall comply with all of Landlord's reasonable rules, regulations and procedures concerning the construction of Improvements in the Building and access to the Building (collectively, the "Construction Procedures").

(d) *Inspection by Landlord.* Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's Inspection of the Tenant Improvements shall not constitute Landlord's approval of the Tenant improvements. Should Landlord reasonably disapprove any portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects in the Tenant Improvements shall be rectified by Tenant at no expense to Landlord. Landlord shall not receive a separate fee for monitoring the construction of the Tenant Improvements.

(e) *Notice of Non-Responsibility.* Not less than ten (10) days prior to the date Tenant intends to first commence construction of the Tenant improvements, Tenant shall provide Landlord with written notice of its intention to commence construction. Landlord shall have the right from time to time to post notices of non-responsibility at the Premises.

4.3 *Notice of Completion; Copy of Record Set of Plans.* Within ten (10) days after completion of construction of the Tenant Improvements, and as a condition to Landlord's final reimbursement of the Tenant Improvement Allowance, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of Santa Clara County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, and as a condition to Landlord's final reimbursement of the Tenant Improvement Allowance, (a) Tenant shall cause the Architect and Contractor (i) to update the Construction Drawings as necessary to reflect all changes made to the Final Construction Drawings during the course of construction, (ii) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct and (iii) to deliver to Landlord two (2) sets of copies of such record set of drawings, and (b) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

5. *Completion.* Tenant hereby covenants and agrees to cause the Tenant Improvements to be completed as soon as reasonably possible following the Commencement Date. Subject to the performance by Landlord of its obligations with respect to the funding of the Tenant Improvement Allowance, Tenant agrees to cause the Tenant Improvements to be paid for, at Tenant's sole cost end expense. Tenant shall be primarily obligated to complete the construction of the Tenant Improvements, and the failure of Tenant's Agents to perform their obligations with respect to the construction of the Tenant Improvements shall not relieve Tenant of its obligation to complete the construction of the Tenant Improvements. Tenant acknowledges and agrees that its obligation to pay Base Rent and other amounts due under the Lease as of the Rent Commencement Date is not conditioned on Tenant's completion of the Tenant Improvements prior to the Rent Commencement Date or at any other time.

6. *Miscellaneous.*

6.1 *Tenant's Representative.* Tenant has designated Chris Rearms as its sole representative with respect to the matters set forth in this Work Letter Agreement, and, until further notice to Landlord, Tenant's representative shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

6.2 *Landlord's Representative.* Landlord has designated Kevin Morris as its sole representative with respect to the matters set forth in this Work Letter Agreement, and until further notice to Tenant, Landlords, representative shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

6.3 *Time of the Essence.* Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

6.4 *Tenant's Default.* Notwithstanding any provision to the contrary contained in the Lease, if Tenant commits a default as defined in section 17.1 of the Lease, and fails to cure such default during any applicable cure period, then, in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance until such default is cured. The failure of Tenant or Landlord to perform any of Its obligations under this Work Letter Agreement shall constitute a default under the Lease, subject to the applicable cure periods set forth therein.

Exhibit 1 to Work Letter Agreement

(Space Plan)

[GRAPHIC OMITTED]

EXHIBIT F

Addendum to Standard Industrial Lease (the "Lease")
dated the 30th day of June, 2005, Between
The Realty Associates Fund III, L.P. ("Landlord") and
Accuray Incorporated ("Tenant")

It is hereby agreed by Landlord and Tenant that the provisions of this Addendum are a part of the Lease. If there is a conflict between the terms and conditions of this Addendum and the terms and conditions of the Lease, the terms and conditions of this Addendum shall control. Capitalized terms in this Addendum shall have the same meaning as capitalized terms in the Lease, and, if a Work Letter Agreement is attached to this Lease, as those terms have been defined in the Work Letter Agreement.

1. *Option to Extend.* Landlord hereby grants to Tenant the option to extend the term of the Lease for one (1) four (4)-year period (the "Extension Option") commencing when the initial lease term expires upon each and all of the following terms and conditions:

(a) On a date which is prior to the date that the option period would commence (if exercised) by at least two hundred seventy (270) days and not more than three hundred sixty (360) days, Landlord shall have received from Tenant a written notice of the exercise of the option to extend the Lease for said additional term (an "*Exercise Notice*"), time being of the essence. If the Exercise Notice is not so given and received, the Extension Option shall automatically expire, Tenant shall no longer have the right to give an Extension Notice and this section shall be of no further force or effect. Tenant shall give the Exercise Notice using certified mail return receipt requested or some other method where the person delivering the package containing the Exercise Notice obtains a signature of the person accepting the package containing the Exercise Notice (e.g., by Fed Ex with the requirement that the FedEx delivery person obtain a signature from the person accepting the package).

(b) All of the terms and conditions of the Lease except where specifically modified by this section shall apply.

(c) The monthly Base Rent payable during the option term shall be the Market Rate on the date the option term commences.

(d) The term "Market Rate" shall mean the annual amount per rentable square foot that a willing, comparable renewal tenant would pay and a willing, comparable landlord of a similar building would accept at arm's length for similar space, giving appropriate consideration to the following matters: (i) annual rental rates per rentable square foot; (ii) the type of escalation clauses (including, but without limitation, operating expense, real estate taxes, and CPI) and the extent of liability under the escalation clauses (*i.e.*, whether determined on a "net lease" basis or by increases over a particular base year or base dollar amount); (iii) rent abatement provisions reflecting free rent and/or no rent during the lease term; (iv) length of lease term: (v) size and location of premises being leased; and (vi) other generally applicable terms and conditions of tenancy for similar space; provided, however, Tenant shall not be entitled to any tenant improvement or refurbishment allowance. Tenant shall not be entitled to any tenant improvement or refurbishment allowance, but such fact shall be take into account in determining the Market Rate, the existence of any specialized improvements paid for by Tenant (including, without limitation, clean rooms) shall not be taken into consideration. The Market Rate may also designate periodic rental increases, a new Base Year and similar economic adjustments.

(e) If Tenant exercises the Extension Option, Landlord shall determine the Market Rate by using the good faith judgment. Landlord shall provide Tenant with written notice of such amount on or before the date that is ninety (90) days prior to the date that the term of the Extension Option will commence. Tenant shall have fifteen (15) days ("*Tenant's Review Period*") after receipt

of Landlord's notice of the new rental within which to accept such rental. In the event Tenant fails to accept in writing such rental proposal by Landlord, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt to agree upon such Market Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("*Outside Agreement Date*"), then each party shall place in a separate sealed envelope their final proposal as to the Market Rate, and such determination shall be submitted to arbitration in accordance with subsections (i) through (v) below.

(i) Landlord and Tenant shall meet with each other within five (5) business days after the Outside Agreement Date and exchange their sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Market Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes, Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate broker or agent who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of buildings similar to the Premises in the geographical area of the Premises. Neither Landlord nor Tenant shall consult with such broker or agent as to his or her opinion as to the Market Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Market Rate for the Premises is the closest to the actual Market Rate for the Premises as determined by the arbitrator, taking into account the requirements for determining Market Rate set forth herein. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information such party deems relevant to the determination of the Market Rate ("*MR Data*"), and the other party may submit a reply in writing within five (5) business days after receipt of such MR Data.

(ii) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Market Rate and shall notify Landlord and Tenant of such determination.

(iii) The decision of the arbitrator shall be final and binding upon Landlord and Tenant.

(iv) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the presiding judge of the Superior Court for the county in which the Premises is located, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(v) The cost of the arbitration shall be paid by Landlord and Tenant equally.

2. *Building Signage.* Subject to the following terms and conditions, Landlord shall permit Tenant to install, at Tenant's sole cost and expense, a building sign (the "*Building Sign*") containing Tenant's name above the entrance to the Building:

(a) The size, location, color and design of the Building Sign shall be approved by Landlord, in Landlord's reasonable discretion;

(b) The cost of designing, fabricating, installing and obtaining governmental approvals for the Building Sign shall be paid by Tenant, at Tenant's sole cost and expense. Landlord shall have the right to approve the contractor that installs the Building Sign and the contractor shall comply with all of Landlord's policies and procedures relating to construction performed at the Building (*e.g.*, insurance, safety etc.);

(c) Tenant shall maintain the Building Sign in good order and repair, at Tenant's sole cost and expense;

(d) Tenant's right to install the Building Sign is subject to the insurance by the City of Sunnyvale (the "*City*") of any required approvals and permits for the installation of the Building Sign, and Landlord shall cooperate with Tenant in obtaining such approvals, at no material cost or expense to Landlord. Landlord makes no representation or warranty that the City will permit the installation of the Building Sign, and Tenant's obligations under this Lease are not conditioned upon the City permitting the installation of the Building Sign or any other sign;

(e) Any modification of the Building Sign shall be considered to be an "Alteration" within the meaning of section 13.1 of the Lease, and shall be governed by the provisions thereof;

(f) Tenant shall remove the Building Sign and repair any damage to the Building, at Tenant's sole cost and expense, upon the termination or expiration of the Lease term;

(g) Subject to Landlord's right to place signs on the exterior of the Building to comply with applicable laws, Tenant shall have the exclusive right to place exterior building signage on the Building; and

(h) If Tenant assigns the Lease or subleases the entire Premises, Landlord shall not unreasonably withhold its consent to the modification of the Building Sign to state the name of the person or entity to whom the Lease is assigned or to whom the Premises is subleased provided that the assignee or subtenant obtains from the City all required approvals and permits.

3. *Monument Sign.* Tenant shall have the non-exclusive right to place its name in the lower position on the monument sign located on the corner of Orleans Drive and Moffett Park Drive (the "*Monument Sign*"). Ion America Corporation has the right to the top position on the Monument Sign. Landlord shall have the right to approve the size, design, location and color of Tenant's name on the Monument Sign, in Landlord's reasonable discretion. Tenant shall maintain its name in good condition. The Monument Sign will include spaces for the names of multiple tenants, and Tenant acknowledges that Landlord may elect to add additional names to the Monument Sign. If Tenant assigns the Lease or subleases the entire Premises, Landlord shall not unreasonably withhold its consent to the modification of the Monument Sign to state the name of the person or entity to whom the Lease is assigned or to whom the Premises is subleased provided that the assignee or subtenant obtains from the City all required approvals and permits.

4. *Confidentiality.* Landlord acknowledges the confidential nature of the work to be performed by Tenant within the Premises and agrees that it shall use commercially reasonable efforts to keep confidential all confidential information observed or obtained by Landlord regarding any products and other information of or relating to Tenant's business, except to the extent such information is required to be disclosed to a third party by law, which obligation shall survive expiration or sooner termination of this Lease.

IN WITNESS WHEREOF, the parties hereto have respectively executed this Addendum.

LANDLORD:

The Realty Associates Fund III, L.P., a Delaware limited partnership

By: Realty Associates Fund III GP Limited Partnership, a Delaware limited partnership, its general partner

By: Realty Associates Fund III LLC, a Delaware limited liability company, its sole general partner

By: Realty Associates Fund III Trust, a Massachusetts business trust, sole Member

By: /s/ SCOTT W. AMLING

(Officer) Scott W. Amling
Regional Director

By: Realty Associates Fund III Texas Corporation, a Texas corporation, general partner

By: /s/ SCOTT W. AMLING

(Officer) Scott W. Amling
Regional Director

TENANT:

Accuray Incorporated, a California corporation

By: /s/ CHRIS A. RAANES

Chris A. Raanes
(print name)

Its: Chief Operating Officer
(print name)

By: /s/ ROBERT E. MCNAMARA

Robert E. McNamara
(print name)

Its: Chief Financial Officer
(print name)

QuickLinks

Exhibit 10.3

ACCURAY INCORPORATED
1993 STOCK OPTION PLAN

1. *Purpose.* The Accuray Incorporated 1993 Stock Option Plan (the "Plan") is established to attract, retain and reward persons providing services to Accuray Incorporated and any successor corporation thereto (collectively referred to as the "Company"), and any present or future parent and/or subsidiary corporations of such corporation (all of whom along with the Company being individually referred to as a "Participating Company" and collectively referred to as the "Participating Company Group"), and to motivate such persons to contribute to the growth and profits of the Participating Company Group in the future. For purposes of the Plan, a parent corporation and a subsidiary corporation shall be as defined in sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended (the "Code").

2. *Administration.* The Plan shall be administered by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board. Any subsequent references herein to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted herein, including, without limitation, the power to terminate or amend the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law. All questions of interpretation of the Plan or of any options granted under the Plan (an "Option") shall be determined by the Board, and such determinations shall be final and binding upon all persons having an interest in the Plan and/or any Option. Options may be either incentive stock options as defined in section 422 of the Code ("Incentive Stock Options") or nonqualified stock options. Any officer of a Participating Company shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the officer has apparent authority with respect to such matter, right, obligation, or election.

3. *Eligibility.* Options may be granted only to employees (including officers and directors who are also employees) and directors of the Participating Company Group or to individuals who are rendering services as consultants, advisors, or other independent contractors to the Participating Company Group. For purposes of the foregoing sentence, "employees" shall include prospective employees to whom Options are granted in connection with written offers of employment with the Participating Company Group and "consultants" or "advisors" shall include prospective consultants or advisors to whom Options are granted in connection with written consulting or advising offers with the Participating Company Group. The Board shall, in its sole discretion, determine which persons shall be granted Options (an "Optionee"). A director of the Company may only be granted a nonqualified stock option unless the director is also an employee of the Company. An individual who is rendering services as a consultant, advisor, or other independent contractor and an individual granted an option before becoming an employee may only be granted a nonqualified stock option. Eligible persons may be granted more than one (1) Option.

4. *Shares Subject to Option.* Options shall be for the purchase of shares of the authorized but unissued common stock of the Company (the "Stock"), subject to adjustment as provided in paragraph 9 below. The maximum number of shares of Stock which may be issued under the Plan shall be Four Hundred Thousand (400,000) shares. In the event that any outstanding Option for any reason expires or is terminated or canceled, the shares allocable to the unexercised portion of such Option may again be subject to an Option grant.

5. *Time for Granting Options.* All Options shall be granted, if at all, within ten (10) years from the earlier of the date the Plan is adopted by the Board or the date the Plan is duly approved by the shareholders of the Company.

6. *Terms, Conditions and Form of Options.* Subject to the provisions of the Plan, the Board shall determine for each Option (which need not be identical) the number of shares of Stock for which the Option shall be granted, the option exercise price of the Option, the timing and terms of exercisability and vesting of the Option, whether the Option is to be treated as an Incentive Stock Option or as a nonqualified stock option and all other terms and conditions of the Option not inconsistent with the Plan. Options granted pursuant to the Plan shall be evidenced by written agreements specifying the number of shares of Stock covered thereby, in such form as the Board shall from time to time establish, which agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

(a) *Option Exercise Price.* The option exercise price for each Option shall be established in the sole discretion of the Board; provided, however, that (i) the option exercise price per share for an Incentive Stock Option shall not be less than the fair market value, as determined by the Board, of a share of Stock on the date of the granting of the Option, (ii) the option exercise price per share for a nonqualified stock option shall not be less than eighty-five percent (85%) of the fair market value, as determined by the Board, of a share of Stock on the date of the granting of the Option and (iii) no Option granted to an Optionee who at the time the Option is granted owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company within the meaning of section 422(b)(6) of the Code (a "Ten Percent Owner Optionee") shall have an option exercise price per share less than one hundred ten percent (110%) of the fair market value, as determined by the Board, of a share of Stock on the date of the granting of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a nonqualified stock option) may be granted with an option exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner qualifying with the provisions of section 424(a) of the Code.

(b) *Exercise Period of Options.* The Board shall have the power to set the time or times within which each Option shall be exercisable or the event or events upon the occurrence of which all or a portion of each Option shall be exercisable and the term of each Option; provided, however, that (i) no Option shall be exercisable after the expiration of ten (10) years after the date such Option is granted, and (ii) no Incentive Stock Option granted to a Ten Percent Owner Optionee shall be exercisable after the expiration of five (5) years after the date such Option is granted.

(c) *Payment of Option Exercise Price.* Payment of the option exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check, or cash equivalent, (ii) by tender to the Company of shares of the Company's stock owned by the Optionee having a value, as determined by the Board (but without regard to any restrictions on transferability applicable to such stock by reason of federal or state securities laws or agreements with an underwriter for the Company), not less than the option exercise price, (iii) by the Optionee's recourse promissory note, (iv) by the assignment of the proceeds of a sale of some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), or (v) by any combination thereof. The Board may at any time or from time to time, by adoption of or by amendment to either of the standard forms of stock option agreement described in paragraph 7 below, or by other means, grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the option exercise price and/or which otherwise restrict one (1) or more forms of consideration. Notwithstanding the foregoing, an Option may not be exercised by tender to the Company of shares of the Company's stock to the extent such tender of stock would constitute a violation of the provisions of any law, regulation and/or agreement restricting the redemption of

the Company's stock. Furthermore, no promissory note shall be permitted if an exercise using a promissory note would be a violation of any law. Any permitted promissory note shall be due and payable not more than four (4) years after the Option is exercised, and interest shall be payable at least annually and be at least equal to the minimum interest rate necessary to avoid imputed interest pursuant to all applicable sections of the Code. The Board shall have the authority to permit or require the Optionee to secure any promissory note used to exercise an Option with the shares of Stock acquired on exercise of the Option and/or with other collateral acceptable to the Company.

(i) Unless otherwise provided by the Board, in the event the Company at any time is subject to the regulations promulgated by the Board of Governors of the Federal Reserve System or any other governmental entity affecting the extension of credit in connection with the Company's securities, any promissory note shall comply with such applicable regulations, and the Optionee shall pay the unpaid principal and accrued interest, if any, to the extent necessary to comply with such applicable regulations.

(ii) The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve and/or terminate any program and/or procedures for the exercise of Options by means of an assignment of the proceeds of a sale of some or all of the shares of Stock to be acquired upon such exercise.

7. *Standard Forms of Stock Option Agreement.*

(a) *Incentive Stock Options.* Unless otherwise provided for by the Board at the time an Option is granted, an Option designated as an "Incentive Stock Option" shall comply with and be subject to the terms and conditions set forth in the form of incentive stock option agreement attached hereto as Exhibit A and incorporated herein by reference.

(b) *Nonqualified Stock Options.* Unless otherwise provided for by the Board at the time an Option is granted, an Option designated as a "Nonqualified Stock Option" shall comply with and be subject to the terms and conditions set forth in the form of nonqualified stock option agreement attached hereto as Exhibit B and incorporated herein by reference.

(c) *Standard Term for Options.* Unless otherwise provided for by the Board in the grant of an Option, any Option granted hereunder shall be exercisable for a term of ten (10) years.

8. *Authority to Vary Terms.* The Board shall have the authority from time to time to vary the terms of either of the standard forms of Stock Option Agreement described in paragraph 7 above either in connection with the grant of an individual Option or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of such revised or amended standard form or forms of stock option agreement shall be in accordance with the terms of the Plan.

9. *Effect of Change in Stock Subject to Plan.* Appropriate adjustments shall be made in the number and class of shares of Stock subject to the Plan and to any outstanding Options and in the option exercise price of any outstanding Options in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or like change in the capital structure of the Company.

10. *Transfer of Control.* A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to the Company:

(a) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where the shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange;

(b) a merger or consolidation in which the Company is not the surviving corporation;

(c) a merger or consolidation in which the Company is the surviving corporation where the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such merger or consolidation;

(d) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange, or transfer to one (1) or more parent or subsidiary corporations (as defined in paragraph 1 above) of the Company); or

(e) A liquidation or dissolution of the Company.

In the event of a Transfer of Control, the Board, in its sole discretion, shall either (i) provide that any unexercisable and/or unvested portion of the outstanding Options shall be immediately exercisable and vested as of a date prior to the Transfer of Control, as the Board so determines, or (ii) arrange with the surviving, continuing, successor, or purchasing corporation or parent corporation thereof, as the case may be (the "Acquiring Corporation"), for the Acquiring Corporation to either assume the Company's rights and obligations under outstanding Options or substitute options for the Acquiring Corporation's stock for such outstanding Options. The exercise and/or vesting of any Option that was permissible solely by reason of this paragraph 10 shall be conditioned upon the consummation of the Transfer of Control. Any Options which are neither assumed or substituted for by the Acquiring Corporation in connection with the Transfer of Control nor exercised as of the date of the Transfer of Control shall terminate and cease to be outstanding effective as of the date of the Transfer of Control.

11. *Provision of Information.* At least annually, copies of the Company's balance sheet and income statement for the just completed fiscal year shall be made available to each Optionee and purchasers of shares of Stock upon the exercise of an Option. The Company shall not be required to provide such information to persons whose duties in connection with the Company assure them access to equivalent information.

12. *Options Non-Transferable.* During the lifetime of the Optionee, the Option shall be exercisable only by the Optionee. No Option shall be assignable or transferable by the Optionee, except by will or by the laws of descent and distribution.

13. *Termination or Amendment of Plan.* The Board, including any duly appointed committee of the Board, may terminate or amend the Plan at any time; provided, however, that without the approval of the Company's shareholders, there shall be (a) no increase in the total number of shares of Stock covered by the Plan (except by operation of the provisions of paragraph 9 above), (b) no change in the class of persons eligible to receive Incentive Stock Options and (c) no expansion in the class of persons eligible to receive nonqualified stock options. In any event, no amendment may adversely affect any then outstanding Option or any unexercised portion thereof, without the consent of the Optionee, unless such amendment is required to enable an Option designated as an Incentive Stock Option to qualify as an Incentive Stock Option.

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ACCURAY INCORPORATED

INCENTIVE STOCK OPTION AGREEMENT

Accuray Incorporated, (the "Company"), granted to the individual named below an option to purchase certain shares of common stock of the Company, in the manner and subject to the provisions of this Option Agreement.

1. *Definitions:*

(a) "Optionee" shall mean .

(b) "Date of Grant" shall mean .

(c) "Number of Option Shares" shall mean shares of common stock of the Company as adjusted from time to time pursuant to paragraph 9 below.

(d) "Exercise Price" shall mean $ per share as adjusted from time to time pursuant to paragraph 9 below.

(e) "Initial Exercise Date" shall be .

(f) "Initial Vesting Date"shall be .

(g) Determination of "Vested Ratio":

	Vested Ratio
On Initial Vesting Date	1/4
Plus	
For each full month of the Optionee's continous employment by a Participating Company from the Initial Vesting Date	1/48
In no event shall the Vested Ratio exceed 1/1.	

(h) "Option Term Date" shall mean the date ten (10) years after the Date of Option Grant.

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(j) "Company" shall mean Accuray Incorporated, a California corporation, and any successor corporation thereto.

(k) "Participating Company" shall mean (i) the Company and (ii) any future parent and/or subsidiary corporation of the Company while such corporation is a parent or subsidiary of the Company. For purposes of this Option Agreement, a parent corporation and a subsidiary corporation shall be as defined in sections 424(e) and 424(f) of the Code.

(l) "Participating Company Group" shall mean at any point in time all corporations collectively which are then a Participating Company.

(m) "Plan" shall mean the Accuray Incorporated 1993 Stock Option Plan.

2. *Status of the Option.* This Option is intended to be an incentive stock option as described in section 422 of the Code, but the Company does not represent or warrant that this Option qualifies as such. The Optionee should consult with the Optionee's own tax advisors regarding the tax effects of this Option and the requirements necessary to obtain favorable income tax treatment under section 422 of the Code, including, but not limited to, holding period requirements.

3. *Administration.* All questions of interpretation concerning this Option Agreement shall be determined by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board. Any subsequent references herein to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted in the Plan, including, without limitation, the power to terminate or amend the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law. All determinations by the Board shall be final and binding upon all persons having an interest in the Option. Any officer of a Participating Company shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the officer has apparent authority with respect to such matter, right, obligation, or election.

4. *Exercise of the Option.*

(a) *Right to Exercise.* The Option shall first become exercisable on the Initial Exercise Date. The Option shall be exercisable on and after the Initial Exercise Date and prior to the termination of the Option in the amount equal to the Number of Option Shares multiplied by the Vested Ratio as set forth in paragraph 1 above less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the Number of Option Shares.

(b) *Method of Exercise.* The Option may be exercised by written notice to the Company which must state the election to exercise the Option, the number of shares for which the Option is being exercised and such other representations and agreements as to the Optionee's investment intent with respect to such shares and other administrative matters as may be required pursuant to the provisions of this Option Agreement and the exercise form used by the Company. The written notice must be signed by the Optionee and must be delivered in person or by certified or registered mail, return receipt requested, to the Chief Financial Officer of the Company, or other authorized representative of the Participating Company Group, prior to the termination of the Option as set forth in paragraph 6 below, accompanied by (i) full payment of the exercise price for the number of shares being purchased and (ii) an executed copy, if required herein, of the then current forms of escrow and security agreements referenced below.

(c) *Form of Payment of Option Exercise Price.* Such payment shall be made (i) in cash, by check, or cash equivalent, (ii) by tender to the Company of shares of the Company's common stock owned by the Optionee having a value not less than the option price, which either have been owned by the Optionee for more than six (6) months or were not acquired, directly or indirectly, from the Company, or (iii) by any combination of the foregoing. Notwithstanding the foregoing, the Option may not be exercised by tender to the Company of shares of the Company's common stock to the extent such tender of stock would constitute a violation of the provisions of any law, regulation and/or agreement restricting the redemption of the Company's common stock.

(d) *Withholding.* At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Optionee hereby authorizes payroll withholding and otherwise agrees to make adequate provision for foreign, federal and state tax withholding obligations of the Company, if any, which arise in connection with the Option, including, without

limitation, obligations arising upon (i) the exercise, in whole or in part, of the Option, (ii) the transfer, in whole or in part, of any shares acquired on exercise of the Option, (iii) the operation of any law or regulation providing for the imputation of interest, or (iv) the lapsing of any restriction with respect to any shares acquired on exercise of the Option. The Optionee is cautioned that the Option is not exercisable unless the Company's withholding obligations are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even though the Option is vested and the Company shall have no obligation to issue a certificate for such shares.

(e) *Certificate Registration.* The certificate or certificates for the shares as to which the Option shall be exercised shall be registered in the name of the Optionee, or, if applicable, the heirs of the Optionee.

(f) *Restrictions on Grant of the Option and Issuance of Shares.* The grant of the Option and the issuance of the shares upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares upon such exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations. In addition, no Option may be exercised unless (i) a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. THE OPTIONEE IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISABLE UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, THE OPTIONEE MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED. Questions concerning this restriction should be directed to the Chief Financial Officer of the Company. As a condition to the exercise of the Option, the Company may require the Optionee to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

(g) *Fractional Shares.* The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. *Non-Transferability of the Option.* The Option may be exercised during the lifetime of the Optionee only by the Optionee or the Optionee's guardian or legal representative as provided under section 422(b)(5) of the Code and may not be assigned or transferred in any manner except by will or by the laws of descent and distribution. Following the death of the Optionee, the Option, to the extent unexercised and exercisable by the Optionee on the date of death, may be exercised by the Optionee's legal representative or by any person empowered to do so under the deceased Optionee's will or under the then applicable laws of descent and distribution.

6. *Termination of the Option.* The Option shall terminate and may no longer be exercised on the first to occur of (a) the Option Term Date as defined above, (b) the last date for exercising the Option following termination of employment as described in paragraph 7 below, or (c) upon a Transfer of Control as described in paragraph 8 below.

7. *Termination of Employment.*

(a) *Termination of the Option.* If the Optionee ceases to be an employee of the Participating Company Group for any reason, except death or disability within the meaning of section 422(c) of the Code, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, may be exercised by the Optionee within thirty (30) days after the date on which the Optionee's employment terminated, but in any event no later

than the Option Term Date. If the Optionee's employment with the Company is terminated because of the death or disability of the Optionee within the meaning of section 422(c) of the Code, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, may be exercised by the Optionee (or the Optionee's legal representative) at any time prior to the expiration of six (6) months from the date on which the Optionee's employment terminated, but in any event no later than the Option Term Date. The Optionee's employment shall be deemed to have terminated on account of death if the Optionee dies within thirty (30) days after the Optionee's termination of employment. Except as provided in this paragraph 7(a), the Option shall terminate and may not be exercised after the Optionee ceases to be an employee of the Participating Company Group.

(b) *Termination of Employment Defined.* For purposes of this paragraph 7, the Optionee's employment shall be deemed to have terminated either upon an actual termination of employment or upon the Optionee's employer ceasing to be a Participating Company.

(c) *Extension if Exercise Prevented by Law.* Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above is prevented by the provisions of paragraph 4(f) above, the Option shall remain exercisable until three (3) months after the date the Optionee is notified by the Company that the Option is exercisable, but in any event no later than the Option Term Date.

(d) *Extension if Optionee Subject to Section 16(b).* Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above would subject the Optionee to suit under Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which the Optionee would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Optionee's termination of employment, or (iii) the Option Term Date.

(e) *Leave of Absence*. For purposes hereof, the Optionee's employment with the Participating Company Group shall not be deemed to terminate if the Optionee takes any military leave, sick leave, or other bona fide leave of absence approved by the Company of ninety (90) days or less. In the event of a leave in excess of ninety (90) days, the Optionee's employment shall be deemed to terminate on the ninety-first (91st) day of the leave unless the Optionee's right to reemployment with the Participating Company Group remains guaranteed by statute or contract. Notwithstanding the foregoing, however, a leave of absence shall be treated as employment for purposes of determining the Optionee's Vested Ratio if and only if the leave of absence is designated by the Company as (or required by law to be) a leave for which vesting credit is given.

8. *Transfer of Control.* A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to the Company:

(a) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where the shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange;

(b) a merger or consolidation in which the Company is not the surviving corporation;

(c) a merger or consolidation in which the Company is the surviving corporation where the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such merger or consolidation;

(d) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange, or transfer to one (1) or more parent or subsidiary corporations (as defined in paragraph 1 above) of the Company); or

(e) A liquidation or dissolution of the Company.

In the event of a Transfer of Control, the Board shall provide that any unexercised and/or unvested portion of the Option shall be immediately exercisable and vested as of a date prior to the Transfer of Control determined by the Board. The Option shall terminate effective as of the date of the Transfer of Control to the extent that the Option is neither assumed nor substituted by the Acquiring Corporation nor exercised as of the date of the Transfer of Control.

9. *Effect of Change in Stock Subject to the Option.* Appropriate adjustments shall be made in the number, exercise price and class of shares of stock subject to the Option in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or like change in the capital structure of the Company. In the event a majority of the shares which are of the same class as the shares that are subject to the Option are exchanged for, converted into, or otherwise become (whether or not pursuant to a Transfer of Control) shares of another corporation (the "New Shares"), the Company may unilaterally amend the Option to provide that the Option is exercisable for New Shares. In the event of any such amendment, the number of shares and the exercise price shall be adjusted in a fair and equitable manner.

10. *Rights as a Shareholder or Employee.* The Optionee shall have no rights as a shareholder with respect to any shares covered by the Option until the date of the issuance of a certificate or certificates for the shares for which the Option has been exercised. No adjustment shall be made for dividends or distributions or other rights for which the record date is prior to the date such certificate or certificates are issued, except as provided in paragraph 9 above. Nothing in the Option shall confer upon the Optionee any right to continue in the employ of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Optionee's employment at any time.

11. *Right of First Refusal.*

(a) *Right of First Refusal.* In the event the Optionee proposes to sell, pledge, or otherwise transfer any shares acquired upon the exercise of the Option (the "Transfer Shares") to any person or entity, including, without limitation, any shareholder of the Participating Company Group, the Company shall have the right to repurchase the Transfer Shares under the terms and subject to the conditions set forth in this paragraph 11 (the "Right of First Refusal"). For purposes of this paragraph 11, a change in record ownership of shares, including, without limitation, any such change pursuant to a decree of divorce or marital separation, shall be deemed a transfer subject to the Right of First Refusal whether or not such change in record ownership results in a change in the beneficial ownership of such shares.

(b) *Notice of Proposed Transfer.* Prior to any proposed transfer of the Transfer Shares, the Optionee shall give a written notice (the "Transfer Notice") to the Company describing fully the proposed transfer, including the number of Transfer Shares, the name and address of the proposed transferee (the "Proposed Transferee") and, if the transfer is voluntary, the proposed transfer price and containing such information necessary to show the bona fide nature of the proposed transfer. In the event of a bona fide gift or involuntary transfer, the proposed transfer price shall be deemed to be the fair market value of the Transfer Shares as determined by the Company in good faith. In the event the Optionee proposes to transfer any shares acquired upon the exercise of the Option to more than one (1) Proposed Transferee, the Optionee shall provide a separate Transfer Notice for the proposed transfer to each Proposed Transferee. The Transfer Notice shall be signed by both the Optionee and the Proposed Transferee and must constitute a binding commitment of

the Optionee and the Proposed Transferee for the transfer of the Transfer Shares to the Proposed Transferee subject only to the Right of First Refusal.

(c) *Bona Fide Transfer.* In the event that the Company shall determine that the information provided by the Optionee in the Transfer Notice is insufficient to establish the bona fide nature of a proposed voluntary transfer, the Company shall give the Optionee written notice of the Optionee's failure to comply with the procedure described in this paragraph 11 and the Optionee shall have no right to transfer the Transfer Shares without first complying with the procedure described in this paragraph 11. The Optionee shall not be permitted to transfer the Transfer Shares if the proposed transfer is not bona fide.

(d) *Exercise of the Right of First Refusal.* In the event the proposed transfer is deemed to be bona fide, the Company shall have the right to purchase all, but not less than all, of the Transfer Shares (except as the Company and the Optionee otherwise agree) at the purchase price and on the terms set forth in the Transfer Notice by delivery to the Optionee of a notice of exercise of the Right of First Refusal within thirty (30) days after the date the Transfer Notice is delivered to the Company. The Company's exercise or failure to exercise the Right of First Refusal with respect to any proposed transfer described in a Transfer Notice shall not affect the Company's ability to exercise the Right of First Refusal with respect to any proposed transfer described in any other Transfer Notice, whether or not such other Transfer Notice is issued by the Optionee or issued by a person other than the Optionee with respect to a proposed transfer to the same Proposed Transferee. If the Company exercises the Right of First Refusal, the Company and the Optionee shall thereupon consummate the sale of the Transfer Shares to the Company on the terms set forth in the Transfer Notice within sixty (60) days after the date of the Transfer Notice is delivered to the Company (unless a longer period is offered by the Proposed Transferee); provided, however, that in the event the Transfer Notice provides for the payment for the Transfer Shares other than in cash, the Company shall have the option of paying for the Transfer Shares by the discounted cash equivalent of the consideration described in the Transfer Notice as reasonably determined by the Company. For purposes of the foregoing, cancellation of any indebtedness of the Optionee to any Participating Company shall be treated as payment to the Optionee in cash to the extent of the unpaid principal and any accrued interest canceled.

(e) *Failure to Exercise the Right of First Refusal.* If the Company fails to exercise the Right of First Refusal in full within the period specified in paragraph 11(d) above, the Optionee may conclude a transfer to the Proposed Transferee of the Transfer Shares on the terms and conditions described in the Transfer Notice, provided such transfer occurs not later than one hundred twenty (120) days following delivery to the Company of the Transfer Notice. The Company shall have the right to demand further assurances from the Optionee and the Proposed Transferee (in a form satisfactory to the Company) that the transfer of the Transfer Shares was actually carried out on the terms and conditions described in the Transfer Notice. No Transfer Shares shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed transfer as bona fide. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance by the Optionee with the procedure described in this paragraph 11.

(f) *Transferees of the Transfer Shares.* All transferees of the Transfer Shares or any interest therein, other than the Company, shall be required as a condition of such transfer to agree in writing (in a form satisfactory to the Company) that such transferee shall receive and hold such Transfer Shares or interests subject to the provisions of this paragraph 11 providing for the Right of First Refusal with respect to any subsequent transfer. Any sale or transfer of any shares acquired upon exercise of the Option shall be void unless the provisions of this paragraph 11 are met.

(g) *Transfers Not Subject to the Right of First Refusal.* The Right of First Refusal shall not apply to any transfer or exchange of the shares acquired pursuant to the exercise of the Option if such transfer is in connection with an Ownership Change. If the consideration received pursuant to such transfer or exchange consists of stock of a Participating Company, such consideration shall remain subject to the Right of First Refusal unless the provisions of paragraph 11(i) below result in a termination of the Right of First Refusal.

(h) *Assignment of the Right of First Refusal.* The Company shall have the right to assign the Right of First Refusal at any time, whether or not the Optionee has attempted a transfer, to one (1) or more persons as may be selected by the Company.

(i) *Early Termination of the Right of First Refusal.* The other provisions of this paragraph 11 notwithstanding, the Right of First Refusal shall terminate, and be of no further force and effect, upon (i) the occurrence of a Transfer of Control, unless the surviving, continuing, successor, or purchasing corporation, as the case may be, assumes the Company's rights and obligations under the Plan, or (ii) the existence of a public market for the class of shares subject to the Right of First Refusal. A "public market" shall be deemed to exist if (x) such stock is listed on a national securities exchange (as that term is used in the Exchange Act) or (y) such stock is traded on the over-the-counter market and prices therefor are published daily on business days in a recognized financial journal.

12. *Escrow.*

(a) *Establishment of Escrow.* To insure shares subject to the Right of First Refusal will be available for repurchase, the Company may require the Optionee to deposit the certificate or certificates evidencing the shares which the Optionee purchases upon exercise of the Option with an agent designated by the Company under the terms and conditions of an escrow agreement approved by the Company. If the Company does not require such deposit as a condition of exercise of the Option, the Company reserves the right at any time to require the Optionee to so deposit the certificate or certificates in escrow. The Company shall bear the expenses of the escrow.

(b) *Delivery of Shares to Optionee.* As soon as practicable after the expiration of the Right of First Refusal, but not more frequently than twice each calendar year, the agent shall deliver to the Optionee the shares no longer subject to such restrictions.

(c) *Notices and Payments.* In the event the shares held in escrow are subject to the Company's exercise of the Right of First Refusal, the notices required to be given to the Optionee shall be given to the escrow agent and any payment required to be given to the Optionee shall be given to the escrow agent. Within thirty (30) days after payment by the Company, the escrow agent shall deliver the shares which the Company has purchased to the Company and shall deliver the payment received from the Company to the Optionee.

13. *Stock Dividends Subject to Option Agreement.* If, from time to time, there is any stock dividend, stock split, or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of this Option Agreement, then in such event any and all new substituted or additional securities to which the Optionee is entitled by reason of the Optionee's ownership of the shares acquired upon exercise of the Option shall be immediately subject to the Right of First Refusal with the same force and effect as the shares subject to the Right of First Refusal immediately before such event.

14. *Notice of Sales Upon Disqualifying Disposition.* The Optionee shall dispose of the shares acquired pursuant to the Option only in accordance with the provisions of this Option Agreement. In addition, the Optionee shall promptly notify the Chief Financial Officer of the Company if the Optionee disposes of any of the shares acquired pursuant to the Option within one (1) year from the

date the Optionee exercises all or part of the Option or within two (2) years of the date of grant of the Option. Until such time as the Optionee disposes of such shares in a manner consistent with the provisions of this Option Agreement, the Optionee shall hold all shares acquired pursuant to the Option in the Optionee's name (and not in the name of any nominee) for the one-year period immediately after exercise of the Option and the two-year period immediately after grant of the Option. At any time during the one-year or two-year periods set forth above, the Company may place a legend or legends on any certificate or certificates representing shares acquired pursuant to the Option requesting the transfer agent for the Company's stock to notify the Company of any such transfers. The obligation of the Optionee to notify the Company of any such transfer shall continue notwithstanding that a legend has been placed on the certificate or certificates pursuant to the preceding sentence.

15. *Representations and Warranties.* In connection with the proposed purchase of the Option, the Optionee hereby agrees, represents and warrants as follows:

(a) The Optionee is purchasing the Shares solely for the Optionee's own account for investment and not with a view to, or for resale in connection with any distribution thereof within the meaning of the Securities Act. The Optionee further represents that the Optionee does not have any present intention of selling, offering to sell or otherwise disposing of or distributing the Shares or any portion thereof; and that the entire legal and beneficial interest of the Optionee is acquiring is being purchased for, and will be held for the account of, the Optionee only and neither in whole nor in part for any other person.

(b) The Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. The Optionee further represents and warrants that the Optionee has discussed the Company and its plans, operations and financial condition with its officers, has received all such information as the Optionee deems necessary and appropriate to enable the Optionee to evaluate the financial risk inherent in making an investment in the Shares and has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof.

(c) The Optionee realizes that this purchase of the Shares will be a highly speculative investment and that the Optionee is able, without impairing his or her financial condition, to hold the Shares for an indefinite period of time and to suffer a complete loss on the Optionee's investment.

(d) The Company has disclosed to the Optionee that:

(i) The sale of the Shares has not been registered under the Securities Act, and the Shares must be held indefinitely unless a transfer of it is subsequently registered under the Securities Act or an exemption from such registration is available, and that the Company is under no obligation to register the Shares;

(ii) The Company will make a notation in its records of the aforementioned restrictions on transfer and legends.

(e) The Optionee is aware of the provisions of Rule 144, promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or an affiliate of such issuer), in a nonpublic offering subject to the satisfaction of certain conditions, including among other things: The resale occurring not less than two years from the date the Optionee has purchased and paid for the Shares; the availability of certain public information concerning the Company; the sale being through a broker in an unsolicited "brokers transaction" or in a transaction directly with a market maker (as said term is defined under the Exchange Act); and that any sale of the Shares may be made by him or her only in limited amounts during any three-month period not exceeding specified limitations. The

Optionee further represents that the Optionee understands that at the time the Optionee wishes to sell the Shares there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144, and that, in such event, the Optionee would be precluded from selling the Shares under Rule 144 even if the two-year minimum holding period had been satisfied. The Optionee represents that the Optionee understands that in the event all of the requirements of Rule 144 are not satisfied, registration under the Securities Act or compliance with an exemption from registration will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Without in any way limiting the Optionee's representations and warranties set forth above, the Optionee further agrees that the Optionee will in no event make any disposition of all or any portion of the Shares which the Optionee is purchasing unless:

(i) There is then in effect a Registration Statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said Registration Statement; or

(ii) the Optionee will have notified the Company of the proposed disposition and furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and either:

(1) The Optionee will have furnished the Company with an opinion of the Optionee's own counsel to the effect that such disposition will not require registration of such shares under the Securities Act, and such opinion of the Optionee's counsel will have been concurred in by counsel for the Company and the Company will have advised the Optionee of such concurrence; or

(2) The disposition is made in compliance with Rule 144 or Rule 701 after the Optionee has furnished the Company such detailed statement and after the Company has had a reasonable opportunity to discuss the matter with the Optionee.

(g) The Optionee has (i) a preexisting personal or business relationship with the Company or any of its officers, directors, or controlling persons, consisting of personal or business contacts of a nature and duration to enable the Optionee to be aware of the character, business acumen and general business and financial circumstances of the person with whom such relationship exists, or (ii) such knowledge and experience in financial and business matters as to make the Optionee capable of evaluating the merits and risks of an investment in the Shares and to protect the Optionee's own interests in the transaction, or (iii) both such relationship and such knowledge and experience.

(h) The Optionee understands that the Shares have not been qualified under the Corporate Securities Law of 1968, as amended, of the State of California by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Optionee's representations as expressed herein. the Optionee understands that the Company is relying on the Optionee's representations and warrants that the Company is entitled to rely on such representations and that such reliance is reasonable.

16. *Legends.* The Company may at any time place legends referencing the Right of First Refusal set forth in paragraph 11 above, and any applicable federal or state securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The

Optionee shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Optionee in order to effectuate the provisions of this paragraph 16. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

(a) "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 OR RULE 701 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT."

(b) Any legend required to be placed thereon by the Commissioner of Corporations of the State of California.

(c) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION OR ITS ASSIGNEE SET FORTH IN AN AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION."

(d) "THE SHARES EVIDENCED BY THIS CERTIFICATE WERE ISSUED BY THE CORPORATION TO THE REGISTERED HOLDER UPON EXERCISE OF AN INCENTIVE STOCK OPTION AS DEFINED IN SECTION 422 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("ISO"). IN ORDER TO OBTAIN THE PREFERENTIAL TAX TREATMENT AFFORDED TO ISOs, THE SHARES SHOULD NOT BE TRANSFERRED PRIOR TO . SHOULD THE REGISTERED HOLDER ELECT TO TRANSFER ANY OF THE SHARES PRIOR TO THIS DATE AND FOREGO ISO TAX TREATMENT, THE TRANSFER AGENT FOR THE SHARES SHALL NOTIFY THE CORPORATION IMMEDIATELY. THE REGISTERED HOLDER SHALL HOLD ALL SHARES PURCHASED UNDER THE INCENTIVE STOCK OPTION IN THE REGISTERED HOLDER'S NAME (AND NOT IN THE NAME OF ANY NOMINEE) PRIOR TO THIS DATE OR UNTIL TRANSFERRED AS DESCRIBED ABOVE."

17. *Public Offerings.* The Optionee hereby agrees that in the event of any underwritten public offering of stock, including an initial public offering of stock, made by the Company pursuant to an effective registration statement filed under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for such period of time from and after the effective date of such registration statement as may be established by the underwriter for such public offering; provided, however, that such period of time shall not exceed one hundred eighty (180) days from the effective date of the registration statement to be filed in connection with such public offering. The foregoing limitation shall not apply to shares registered in the initial public offering under the Securities Act.

18. *Binding Effect.* This Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

19. *Termination or Amendment.* The Board, including any duly appointed committee of the Board, may terminate or amend the Plan and/or the Option at any time; provided, however, that no

such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Optionee unless such amendment is required to enable the Option to qualify as an Incentive Stock Option.

20. *Integrated Agreement.* This Option Agreement constitutes the entire understanding and agreement of the Optionee and the Participating Company Group with respect to the subject matter contained herein, and there are no agreements, understandings, restrictions, representations, or warranties among the Optionee and the Company other than those as set forth or provided for herein. To the extent contemplated herein, the provisions of this Option Agreement shall survive any exercise of the Option and shall remain in full force and effect.

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

ACCURAY INCORPORATED

By: _____

Title: _____

The Optionee represents that the Optionee is familiar with the terms and provisions of this Option Agreement, including the Right of First Refusal set forth in paragraph 11, and hereby accepts the Option subject to all of the terms and provisions thereof. The Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Option Agreement.

The undersigned acknowledges receipt of a copy of the Plan.

Date: _____ _____

The undersigned, being the spouse of the above-named Optionee, does hereby acknowledge that the undersigned has read and is familiar with the provisions of the above Option Agreement, including, without limitation, the provisions of paragraph 11 providing a right of first refusal in favor of the Company upon certain changes in record ownership, and the undersigned hereby agrees thereto and joins therein to the extent, if any, that the agreement and joinder of the undersigned may be necessary.

_____

Spouse's Signature (if applicable)

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ACCURAY INCORPORATED

NONQUALIFIED STOCK OPTION AGREEMENT

Accuray Incorporated, (the "Company"), granted to the individual named below an option to purchase certain shares of common stock of the Company, in the manner and subject to the provisions of this Option Agreement.

1. *Definitions:*

(a) "Optionee" shall mean_____.

(b) "Date of Option Grant" shall mean _____.

(c) "Number of Option Shares" shall mean _____ shares of common stock of the Company as adjusted from time to time pursuant to paragraph 9 below.

(d) "Exercise Price" shall mean _____ per share as adjusted from time to time pursuant to paragraph 9 below.

(e) "Initial Exercise Date" shall be _____.

(f) "Initial Vesting Date" shall be _____.

(g) Determination of "Vested Ratio":

Vested Ratio
Prior to Initial Vesting Date
On Initial Vesting Date
Plus
For each full month from the Initial Vesting Date
In no event shall the Vested Ratio exceed 1/1

(h) "Option Term Date" shall mean the date ten (10) years after the Date of Option Grant.

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(j) "Company" shall mean Accuray Incorporated, a California corporation, and any successor corporation thereto.

(k) "Participating Company" shall mean (i) the Company and (ii) any future parent and/or subsidiary corporation of the Company while such corporation is a parent or subsidiary of the Company. For purposes of this Option Agreement, a parent corporation and a subsidiary corporation shall be as defined in sections 424(e) and 424(f) of the Code.

(l) "Participating Company Group" shall mean at any point in time all corporations collectively which are then a Participating Company.

(m) "Plan" shall mean the Accuray Incorporated 1993 Stock Option Plan.

2. *Status of the Option* This Option is intended to be a nonqualified stock option and shall not be treated as an incentive stock option as described in section 422(b) of the Code.

3. *Administration* All questions of interpretation concerning this Option Agreement shall be determined by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board. Any subsequent references herein to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted in the Plan, including, without limitation, the power to terminate or amend the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law. All determinations by the Board shall be final and binding upon all persons having an interest in the Option. Any officer of a Participating Company shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the officer has apparent authority with respect to such matter, right, obligation, or election.

4. *Exercise of the Option.*

(a) *Right to Exercise.* The Option shall first become exercisable on the Initial Exercise Date. The Option shall be exercisable on and after the Initial Exercise Date and prior to the termination of the Option in the amount equal to the Number of Option Shares multiplied by the Vested Ratio as set forth in paragraph 1 above less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the Number of Option Shares.

(b) *Method of Exercise.* The Option may be exercised by written notice to the Company which must state the election to exercise the Option, the number of shares for which the Option is being exercised and such other representations and agreements as to the Optionee's investment intent with respect to such shares and other administrative matters as may be required pursuant to the provisions of this Option Agreement and the exercise form used by the Company. The written notice must be signed by the Optionee and must be delivered in person or by certified or registered mail, return receipt requested, to the Chief Financial Officer of the Company, or other authorized representative of the Participating Company Group, prior to the termination of the Option as set forth in paragraph 6 below, accompanied by (i) full payment of the exercise price for the number of shares being purchased and (ii) an executed copy, if required herein, of the then current forms of escrow and security agreements referenced below.

(c) *Form of Payment of Option Exercise Price.* Such payment shall be made (i) in cash, by check, or cash equivalent, (ii) by tender to the Company of shares of the Company's common stock owned by the Optionee having a value not less than the option price, which either have been owned by the Optionee for more than six (6) months or were not acquired, directly or indirectly, from the Company, or (iii) by any combination of the foregoing. Notwithstanding the foregoing, the Option may not be exercised by tender to the Company of shares of the Company's common stock to the extent such tender of stock would constitute a violation of the provisions of any law, regulation and/or agreement restricting the redemption of the Company's common stock.

(d) *Withholding.* At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Optionee hereby authorizes payroll withholding and otherwise agrees to make adequate provision for foreign, federal and state tax withholding obligations of the Company, if any, which arise in connection with the Option, including, without limitation, obligations arising upon (i) the exercise, in whole or in part, of the Option, (ii) the transfer, in whole or in part, of any shares acquired on exercise of the Option, (iii) the operation of any law or regulation providing for the imputation of interest, or (iv) the lapsing of any restriction with respect to any shares acquired on exercise of the Option. The Optionee is cautioned that the Option is not exercisable unless the Company's withholding obligations are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even

though the Option is vested and the Company shall have no obligation to issue a certificate for such shares.

(e) *Certificate Registration.* The certificate or certificates for the shares as to which the Option shall be exercised shall be registered in the name of the Optionee, or, if applicable, the heirs of the Optionee.

(f) *Restrictions on Grant of the Option and Issuance of Shares.* The grant of the Option and the issuance of the shares upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares upon such exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations. In addition, no Option may be exercised unless (i) a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. THE OPTIONEE IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISABLE UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, THE OPTIONEE MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED. Questions concerning this restriction should be directed to the Chief Financial Officer of the Company. As a condition to the exercise of the Option, the Company may require the Optionee to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

(g) *Fractional Shares.* The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. *Non-Transferability of the Option.* The Option may be exercised during the lifetime of an individual Optionee only by the Optionee or the Optionee's guardian or legal representative as provided under section 422(b)(5) of the Code and may not be assigned or transferred in any manner except by will or by the laws of descent and distribution. Following the death of the Optionee, the Option, to the extent unexercised and exercisable by the Optionee on the date of death, may be exercised by the Optionee's legal representative or by any person empowered to do so under the deceased Optionee's will or under the then applicable laws of descent and distribution. In case of an Optionee which is an entity other than an individual (or partnership or other group of individuals), the Option shall cease to be exercisable upon the dissolution or other winding up of the affairs of the Optionee.

6. *Termination of the Option.* The Option shall terminate and may no longer be exercised on the first to occur of (a) the Option Term Date as defined above, (b) the last date for exercising the Option following termination of employment as described in paragraph 7 below, or (c) upon a Transfer of Control as described in paragraph 8 below.

7. *Termination of Employment.*

(a) *Termination of the Option.* If the Optionee ceases to be an employee of the Participating Company Group for any reason, except death or disability within the meaning of section 422(c) of the Code, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, may be exercised by the Optionee within thirty (30) days after the date on which the Optionee's employment terminated, but in any event no later than the Option Term Date. If the Optionee's employment with the Company is terminated because of the death or disability of the Optionee within the meaning of section 422(c) of the Code, the Option, to the extent unexercised and exercisable by the Optionee on the date on which

the Optionee ceased to be an employee, may be exercised by the Optionee (or the Optionee's legal representative) at any time prior to the expiration of six (6) months from the date on which the Optionee's employment terminated, but in any event no later than the Option Term Date. The Optionee's employment shall be deemed to have terminated on account of death if the Optionee dies within thirty (30) days after the Optionee's termination of employment. Except as provided in this paragraph 7(a), the Option shall terminate and may not be exercised after the Optionee ceases to be an employee of the Participating Company Group.

(b) *Termination of Employment Defined.* For purposes of this paragraph 7, the Optionee's employment shall be deemed to have terminated either upon an actual termination of employment or upon the Optionee's employer ceasing to be a Participating Company.

(c) *Extension if Exercise Prevented by Law.* Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above is prevented by the provisions of paragraph 4(f) above, the Option shall remain exercisable until three (3) months after the date the Optionee is notified by the Company that the Option is exercisable, but in any event no later than the Option Term Date.

(d) *Extension if Optionee Subject to Section 16(b).* Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above would subject the Optionee to suit under Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which the Optionee would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Optionee's termination of employment, or (iii) the Option Term Date.

(e) *Leave of Absence.* For purposes hereof, the Optionee's employment with the Participating Company Group shall not be deemed to terminate if the Optionee takes any military leave, sick leave, or other bona fide leave of absence approved by the Company of ninety (90) days or less. In the event of a leave in excess of ninety (90) days, the Optionee's employment shall be deemed to terminate on the ninety-first (91st) day of the leave unless the Optionee's right to reemployment with the Participating Company Group remains guaranteed by statute or contract. Notwithstanding the foregoing, however, a leave of absence shall be treated as employment for purposes of determining the Optionee's Vested Ratio if and only if the leave of absence is designated by the Company as (or required by law to be) a leave for which vesting credit is given.

(f) *Application to Directors Consultants and Advisor.* For purposes of this Option Agreement, in the event the Optionee is a director or consultant or advisor but not an employee of a Participating Company at the time the Option is granted, termination of the Optionee's status as a director or consultant or advisor of the Participating Company shall be deemed to be termination of the Optionee's employment.

8. *Transfer of Control.* A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to the Company:

(a) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where the shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange;

(b) a merger or consolidation in which the Company is not the surviving corporation;

(c) a merger or consolidation in which the Company is the surviving corporation where the shareholders of the Company before such merger or consolidation do not retain, directly or

indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such merger or consolidation;

(d) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange, or transfer to one (1) or more parent or subsidiary corporations (as defined in paragraph 1 above) of the Company); or

(e) A liquidation or dissolution of the Company.

In the event of a Transfer of Control, the Board shall provide that any unexercised and/or unvested portion of the Option shall be immediately exercisable and vested as of a date prior to the Transfer of Control determined by the Board. The Option shall terminate effective as of the date of the Transfer of Control to the extent that the Option is neither assumed nor substituted by the Acquiring Corporation nor exercised as of the date of the Transfer of Control.

9. *Effect of Chang in Stock Subject to the Option.* Appropriate adjustments shall be made in the number, exercise price and class of shares of stock subject to the Option in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or like change in the capital structure of the Company. In the event a majority of the shares which are of the same class as the shares that are subject to the Option are exchanged for, converted into, or otherwise become (whether or not pursuant to a Transfer of Control) shares of another corporation (the "New Shares"), the Company may unilaterally amend the Option to provide that the Option is exercisable for New Shares. In the event of any such amendment, the number of shares and the exercise price shall be adjusted in a fair and equitable manner.

10. *Rights as a Shareholder or Employee.* The Optionee shall have no rights as a shareholder with respect to any shares covered by the Option until the date of the issuance of a certificate or certificates for the shares for which the Option has been exercised. No adjustment shall be made for dividends or distributions or other rights for which the record date is prior to the date such certificate or certificates are issued, except as provided in paragraph 9 above. Nothing in the Option shall confer upon the Optionee any right to continue in the employ of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Optionee's employment at any time.

11. *Right of First Refusal.*

(a) *Right of First Refusal.* In the event the Optionee proposes to sell, pledge, or otherwise transfer any shares acquired upon the exercise of the Option (the "Transfer Shares") to any person or entity, including, without limitation, any shareholder of the Participating Company Group, the Company shall have the right to repurchase the Transfer Shares under the terms and subject to the conditions set forth in this paragraph 11 (the "Right of First Refusal"). For purposes of this paragraph 11, a change in record ownership of shares, including, without limitation, any such change pursuant to a decree of divorce or marital separation, shall be deemed a transfer subject to the Right of First Refusal whether or not such change in record ownership results in a change in the beneficial ownership of such shares.

(b) *Notice of Proposed Transfer.* Prior to any proposed transfer of the Transfer Shares, the Optionee shall give a written notice (the "Transfer Notice") to the Company describing fully the proposed transfer, including the number of Transfer Shares, the name and address of the proposed transferee (the "Proposed Transferee") and, if the transfer is voluntary, the proposed transfer price and containing such information necessary to show the bona fide nature of the proposed transfer. In the event of a bona fide gift or involuntary transfer, the proposed transfer price shall be deemed to be the fair market value of the Transfer Shares as determined by the Company in good faith. In the event the Optionee proposes to transfer any shares acquired upon the exercise of the Option to more than one (1) Proposed Transferee, the Optionee shall provide a separate Transfer

Notice for the proposed transfer to each Proposed Transferee. The Transfer Notice shall be signed by both the Optionee and the Proposed Transferee and must constitute a binding commitment of the Optionee and the Proposed Transferee for the transfer of the Transfer Shares to the Proposed Transferee subject only to the Right of First Refusal.

(c) *Bona Fide Transfer.* In the event that the Company shall determine that the information provided by the Optionee in the Transfer Notice is insufficient to establish the bona fide nature of a proposed voluntary transfer, the Company shall give the Optionee written notice of the Optionee's failure to comply with the procedure described in this paragraph 11 and the Optionee shall have no right to transfer the Transfer Shares without first complying with the procedure described in this paragraph 11. The Optionee shall not be permitted to transfer the Transfer Shares if the proposed transfer is not bona fide.

(d) *Exercise of the Right of First Refusal.* In the event the proposed transfer is deemed to be bona fide, the Company shall have the right to purchase all, but not less than all, of the Transfer Shares (except as the Company and the Optionee otherwise agree) at the purchase price and on the terms set forth in the Transfer Notice by delivery to the Optionee of a notice of exercise of the Right of First Refusal within thirty (30) days after the date the Transfer Notice is delivered to the Company. The Company's exercise or failure to exercise the Right of First Refusal with respect to any proposed transfer described in a Transfer Notice shall not affect the Company's ability to exercise the Right of First Refusal with respect to any proposed transfer described in any other Transfer Notice, whether or not such other Transfer Notice is issued by the Optionee or issued by a person other than the Optionee with respect to a proposed transfer to the same Proposed Transferee. If the Company exercises the Right of First Refusal, the Company and the Optionee shall thereupon consummate the sale of the Transfer Shares to the Company on the terms set forth in the Transfer Notice within sixty (60) days after the date of the Transfer Notice is delivered to the Company (unless a longer period is offered by the Proposed Transferee); provided, however, that in the event the Transfer Notice provides for the payment for the Transfer Shares other than in cash, the Company shall have the option of paying for the Transfer Shares by the discounted cash equivalent of the consideration described in the Transfer Notice as reasonably determined by the Company. For purposes of the foregoing, cancellation of any indebtedness of the Optionee to any Participating Company shall be treated as payment to the Optionee in cash to the extent of the unpaid principal and any accrued interest canceled.

(e) *Failure to Exercise the Right of First Refusal.* If the Company fails to exercise the Right of First Refusal in full within the period specified in paragraph 11(d) above, the Optionee may conclude a transfer to the Proposed Transferee of the Transfer Shares on the terms and conditions described in the Transfer Notice, provided such transfer occurs not later than one hundred twenty (120) days following delivery to the Company of the Transfer Notice. The Company shall have the right to demand further assurances from the Optionee and the Proposed Transferee (in a form satisfactory to the Company) that the transfer of the Transfer Shares was actually carried out on the terms and conditions described in the Transfer Notice. No Transfer Shares shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed transfer as bona fide. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance by the Optionee with the procedure described in this paragraph 11.

(f) *Transferees of the Transfer Shares.* All transferees of the Transfer Shares or any interest therein, other than the Company, shall be required as a condition of such transfer to agree in writing (in a form satisfactory to the Company) that such transferee shall receive and hold such Transfer Shares or interests subject to the provisions of this paragraph 11 providing for the Right of First Refusal with respect to any subsequent transfer. Any sale or transfer of any shares

acquired upon exercise of the Option shall be void unless the provisions of this paragraph 11 are met.

(g) *Transfers Not Subject to the Right of First Refusal.* The Right of First Refusal shall not apply to any transfer or exchange of the shares acquired pursuant to the exercise of the Option if such transfer is in connection with an Ownership Change. If the consideration received pursuant to such transfer or exchange consists of stock of a Participating Company, such consideration shall remain subject to the Right of First Refusal unless the provisions of paragraph 11(i) below result in a termination of the Right of First Refusal.

(h) *Assignment of the Right of First Refusal.* The Company shall have the right to assign the Right of First Refusal at any time, whether or not the Optionee has attempted a transfer, to one (1) or more persons as may be selected by the Company.

(i) *Early Termination of the Right of First Refusal.* The other provisions of this paragraph 11 notwithstanding, the Right of First Refusal shall terminate, and be of no further force and effect, upon (i) the occurrence of a Transfer of Control, unless the surviving, continuing, successor, or purchasing corporation, as the case may be, assumes the Company's rights and obligations under the Plan, or (ii) the existence of a public market for the class of shares subject to the Right of First Refusal. A "public market" shall be deemed to exist if (x) such stock is listed on a national securities exchange (as that term is used in the Exchange Act) or (y) such stock is traded on the over-the-counter market and prices therefor are published daily on business days in a recognized financial journal.

12. *Escrow.*

(a) *Establishment of Escrow.* To insure shares subject to the Right of First Refusal will be available for repurchase, the Company may require the Optionee to deposit the certificate or certificates evidencing the shares which the Optionee purchases upon exercise of the Option with an agent designated by the Company under the terms and conditions of an escrow agreement approved by the Company. If the Company does not require such deposit as a condition of exercise of the Option, the Company reserves the right at any time to require the Optionee to so deposit the certificate or certificates in escrow. The Company shall bear the expenses of the escrow.

(b) *Delivery of Shares to Optionee.* As soon as practicable after the expiration of the Right of First Refusal, but not more frequently than twice each calendar year, the agent shall deliver to the Optionee the shares no longer subject to such restrictions.

(c) *Notices and Payments.* In the event the shares held in escrow are subject to the Company's exercise of the Right of First Refusal, the notices required to be given to the Optionee shall be given to the escrow agent and any payment required to be given to the Optionee shall be given to the escrow agent. Within thirty (30) days after payment by the Company, the escrow agent shall deliver the shares which the Company has purchased to the Company and shall deliver the payment received from the Company to the Optionee.

13. *Stock Dividends Subject to Option Agreement.* If, from time to time, there is any stock dividend, stock split, or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of this Option Agreement, then in such event any and all new substituted or additional securities to which the Optionee is entitled by reason of the Optionee's ownership of the shares acquired upon exercise of the Option shall be immediately subject to the Right of First Refusal with the same force and effect as the shares subject to the Right of First Refusal immediately before such event.

14. *Representations and Warranties.* In connection with the proposed purchase of the Option, the Optionee hereby agrees, represents and warrants as follows:

(a) The Optionee is purchasing the Shares solely for the Optionee's own account for investment and not with a view to, or for resale in connection with any distribution thereof within the meaning of the Securities Act. The Optionee further represents that the Optionee does not have any present intention of selling, offering to sell or otherwise disposing of or distributing the Shares or any portion thereof; and that the entire legal and beneficial interest of the Optionee is acquiring is being purchased for, and will be held for the account of, the Optionee only and neither in whole nor in part for any other person.

(b) The Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. The Optionee further represents and warrants that the Optionee has discussed the Company and its plans, operations and financial condition with its officers, has received all such information as the Optionee deems necessary and appropriate to enable the Optionee to evaluate the financial risk inherent in making an investment in the Shares and has received satisfactory and complete information concerning the business and financial condition of the Company in response to all inquiries in respect thereof.

(c) The Optionee realizes that this purchase of the Shares will be a highly speculative investment and that the Optionee is able, without impairing his or her financial condition, to hold the Shares for an indefinite period of time and to suffer a complete loss on the Optionee's investment.

(d) The Company has disclosed to the Optionee that:

(i) The sale of the Shares has not been registered under the Securities Act, and the Shares must be held indefinitely unless a transfer of it is subsequently registered under the Securities Act or an exemption from such registration is available, and that the Company is under no obligation to register the Shares;

(ii) The Company will make a notation in its records of the aforementioned restrictions on transfer and legends.

(e) The Optionee is aware of the provisions of Rule 144, promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or an affiliate of such issuer), in a nonpublic offering subject to the satisfaction of certain conditions, including among other things: The resale occurring not less than two years from the date the Optionee has purchased and paid for the Shares; the availability of certain public information concerning the Company; the sale being through a broker in an unsolicited "broker's transaction" or in a transaction directly with a market maker (as said term is defined under the Exchange Act); and that any sale of the Shares may be made by him or her only in limited amounts during any three-month period not exceeding specified limitations. The Optionee further represents that the Optionee understands that at the time the Optionee wishes to sell the Shares there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144, and that, in such event, the Optionee would be precluded from selling the Shares under Rule 144 even if the two-year minimum holding period had been satisfied. The Optionee represents that the Optionee understands that in the event all of the requirements of Rule 144 are not satisfied, registration under the Securities Act or compliance with an exemption from registration will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a

substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Without in any way limiting the Optionee's representations and warranties set forth above, the Optionee further agrees that the Optionee will in no event make any disposition of all or any portion of the Shares which the Optionee is purchasing unless:

(i) There is then in effect a Registration Statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said Registration Statement; or

(ii) the Optionee will have notified the Company of the proposed disposition and furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and either:

(1) The Optionee will have furnished the Company with an opinion of the Optionee's own counsel to the effect that such disposition will not require registration of such shares under the Securities Act, and such opinion of the Optionee's counsel will have been concurred in by counsel for the Company and the Company will have advised the Optionee of such concurrence; or

(2) The disposition is made in compliance with Rule 144 or Rule 701 after the Optionee has furnished the Company such detailed statement and after the Company has had a reasonable opportunity to discuss the matter with the Optionee.

(g) The Optionee has (i) a preexisting personal or business relationship with the Company or any of its officers, directors, or controlling persons, consisting of personal or business contacts of a nature and duration to enable the Optionee to be aware of the character, business acumen and general business and financial circumstances of the person with whom such relationship exists, or (ii) such knowledge and experience in financial and business matters as to make the Optionee capable of evaluating the merits and risks of an investment in the Shares and to protect the Optionee's own interests in the transaction, or (iii) both such relationship and such knowledge and experience.

(h) The Optionee understands that the Shares have not been qualified under the Corporate Securities Law of 1968, as amended, of the State of California by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Optionee's representations as expressed herein. the Optionee understands that the Company is relying on the Optionee's representations and warrants that the Company is entitled to rely on such representations and that such reliance is reasonable.

15. *Legends.* The Company may at any time place legends referencing the Right of First Refusal set forth in paragraph 11 above, and any applicable federal or state securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Optionee shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Optionee in order to effectuate the provisions of this paragraph 15. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

(a) "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 OR RULE

701 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT."

(b) Any legend required to be placed thereon by the Commissioner of Corporations of the State of California.

(c) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION OR ITS ASSIGNEE SET FORTH IN AN AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION."

16. *Public Offerings.* The Optionee hereby agrees that in the event of any underwritten public offering of stock, including an initial public offering of stock, made by the Company pursuant to an effective registration statement filed under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for such period of time from and after the effective date of such registration statement as may be established by the underwriter for such public offering; provided, however, that such period of time shall not exceed one hundred eighty (180) days from the effective date of the registration statement to be filed in connection with such public offering. The foregoing limitation shall not apply to shares registered in the initial public offering under the Securities Act.

17. *Binding Effect.* This Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

18. *Termination or Amendment.* The Board, including any duly appointed committee of the Board, may terminate or amend the Plan and/or the Option at any time; provided, however, that no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Optionee.

19. *Integrated Agreement.* This Option Agreement constitutes the entire understanding and agreement of the Optionee and the Participating Company Group with respect to the subject matter contained herein, and there are no agreements, understandings, restrictions, representations, or warranties among the Optionee and the Company other than those as set forth or provided for herein. To the extent contemplated herein, the provisions of this Option Agreement shall survive any exercise of the Option and shall remain in full force and effect.

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

ACCURAY INCORPORATED

By:

Title:

The Optionee represents that the Optionee is familiar with the terms and provisions of this Option Agreement, including the Right of First Refusal set forth in paragraph 11, and hereby accepts the Option subject to all of the terms and provisions thereof. The Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Option Agreement.

The undersigned acknowledges receipt of a copy of the Plan.

Dated: _____ _____

The undersigned, being the spouse of the above-named Optionee, does hereby acknowledge that the undersigned has read and is familiar with the provisions of the above Option Agreement, including, without limitation, the provisions of paragraph 11 providing a right of first refusal in favor of the Company upon certain changes in record ownership, and the undersigned hereby agrees thereto and joins therein to the extent, if any, that the agreement and joinder of the undersigned may be necessary.

_____

Spouse's Signature (if applicable)

QuickLinks

Exhibit 10.4

ACCURAY INCORPORATED

1998 EQUITY INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Equity Incentive Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, non-Employee members of the Board and Consultants of the Company and its Parent and Subsidiaries and to promote the success of the Company's business. Options granted under the Plan may be incentive stock options (as defined under Section 422 of the Code) or non-statutory stock options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code, as amended, and the regulations promulgated thereunder. Stock purchase rights, stock grants and SARs may also be granted under the Plan.

2. Certain Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees appointed pursuant to Section 4 of the Plan.

(b) "Award" means any award granted to a Participant under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means the Committee appointed by the Board of Directors in accordance with paragraph (a) of Section 4 of the Plan.

(f) "Common Stock" means the Common Stock of the Company.

(g) "Company" means Accuray Incorporated, a California corporation.

(h) "Consultant" means any person, including an advisor, who is engaged by the Company or any Parent or Subsidiary to render services and is compensated for such services, and any director of the Company whether compensated for such services or not.

(i) "Continuous Status as an Employee" means the absence of any interruption or termination of the employment relationship by the Company or any Parent or Subsidiary. Continuous Status as an Employee shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Board, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) transfers between locations of the Company or between the Company, its Parent, its Subsidiaries or its successor.

(j) "Employee" means any person, including officers and directors, employed by the Company or any Parent or Subsidiary of the Company. The payment of a director's fee by the Company shall not be sufficient to constitute "employment" by the Company.

(k) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(l) "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 National Market System of the National Association of Securities Dealers, Inc. Automated Quotation ("Nasdaq") System, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such system or exchange for the last market trading day prior to

the time of determination as reported in the Wall Street Journal or such other source as the Administrator deems reliable or;

(ii) If the Common Stock is quoted on Nasdaq (but not on the National Market System thereof) or regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high and low asked prices for the Common Stock or;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(m) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(n) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(o) "Option" means a stock option granted pursuant to the Plan.

(p) "Optioned Stock" means the Common Stock subject to an Option.

(q) "Optionee" means an Employee or Consultant who receives an Option.

(r) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code.

(s) "Participant" means an Employee or Consultant who receives an Award under the Plan.

(t) "Plan" means this 1998 Equity Incentive Plan.

(u) "Restricted Stock" means shares of Common Stock acquired pursuant to a grant of stock or stock purchase rights under Section 11 below.

(v) "SAR" means a stock appreciation right, which is the right to receive an amount equal to the appreciation, if any, in the Fair Market Value of a Share from the date of the grant of the right to the date of its payment, as adjusted in accordance with Section 13 of the Plan.

(w) "Share" means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

(x) "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. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares which may be optioned, issued or sold under the Plan is 2,341,307 Shares of Common Stock. The Shares may be authorized, but unissued Shares, reacquired Shares, Shares acquired on the open market specifically for distribution under this Plan, or any combination thereof. At no time may the maximum aggregate number of Shares issuable under the Plan exceed 30% of the outstanding common stock on the date hereof, provided, however, that such percentage limitation may be increased with the approval of the holders of $^{2}/_{3}$ of the Company's outstanding securities as of the date of such increase.

If an Option or SAR should expire or become unexercisable for any reason without having been exercised in full, or if shares of Restricted Stock are forfeited, the unused Shares which were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Administration With Respect to Directors and Officers. With respect to grants of Awards to Employees who are also officers or directors of the Company, the Plan shall be administered by (A) the Board, if the Board may administer the Plan in compliance with Rule 16b-3 promulgated under the Exchange Act or any successor thereto ("Rule 16b-3") with respect to a plan intended to qualify thereunder as a discretionary plan, or (B) a Committee designated by the Board to administer the Plan, which Committee shall be constituted in such a manner as to permit the Plan to comply with Rule 16b-3 with respect to a plan intended to qualify thereunder as a discretionary plan. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies, however caused, and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Rule 16b-3 with respect to a plan intended to qualify thereunder as a discretionary plan.

(ii) Multiple Administrative Bodies. If permitted by Rule 16b-3, the Plan may be administered by different bodies with respect to directors, non-director officers and Employees who are neither directors nor officers.

(iii) Administration With Respect to Consultants and Other Employees. With respect to grants of Awards to Employees who are neither directors nor officers of the Company or to Consultants, the Plan shall be administered by (A) the Board, if the Board may administer the Plan in compliance with Rule 16b-3, or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the legal requirements relating to the administration of incentive stock option plans, if any, of California corporate law and applicable securities laws and of the Code (the "Applicable Laws"). Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies, however caused, and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(l) of the Plan;

(ii) to select the officers, Consultants and Employees to whom Awards may from time to time be granted hereunder;

(iii) to determine whether and to what extent Options, stock grants, stock purchase rights or SARs, or any combination thereof, are granted hereunder;

(iv) to determine the number of shares of Common Stock to be covered by each such Award granted hereunder;

(v) to approve forms of agreement for use under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder (including, but not limited to, the share price and any

restriction or limitation or waiver of forfeiture restrictions regarding any Option or other Award and/or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator shall determine, in its sole discretion);

(vii) to determine whether and under what circumstances an Option or SAR may be settled in cash under subsection 9(f) instead of Common Stock;

(viii) to determine whether, to what extent and under what circumstances Common Stock and other amounts payable with respect to an Award under this Plan shall be deferred either automatically or at the election of the participant (including providing for and determining the amount, if any, of any deemed earnings on any deferred amount during any deferral period);

(ix) to reduce the exercise price of any Option or SAR to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option or SAR shall have declined since the date the Option or SAR was granted; and

(x) to determine the terms and restrictions applicable to stock grants, stock purchase rights and the Restricted Stock granted by such stock grant or purchased by exercising such stock purchase rights.

(c) Effect of Committee's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Participants and any other holders of any Awards granted hereunder.

5. Eligibility.

(a) Nonstatutory Stock Options and SARs may be granted to Employees, non-Employee Members of the Board and Consultants. Incentive Stock Options may be granted only to Employees. An Employee or Consultant who has been granted an Option or SAR may, if he is otherwise eligible, be granted additional Options or SARs.

(b) Each Option shall be designated in the written option agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of the Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options.

(c) For purposes of Section 5(b), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(d) The Plan shall not confer upon any Participant any right with respect to continuation of employment or consulting relationship with the Company, nor shall it interfere in any way with his right or the Company's right to terminate his employment or consulting relationship at any time, with or without cause.

6. Vesting. Options or SARs granted under the Plan shall vest in annual increments of at least 20% over not more than five years from the date of each option grant, provided that the Plan Administrator may provide in any Agreement issued pursuant to the Plan that an option may become fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Plan Administrator.

7. Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board of Directors or its approval by the shareholders of the Company as described in Section 19 of the Plan. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 15 of the Plan.

8. Terms of Options and SARs. The term of each Option or SAR shall be the term stated in the written agreement evidencing such Option or SAR; provided, however, that in the case of an Incentive Stock Option, the term shall be no more than ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement. However, in the case of an Option granted to an Optionee who, at the time the 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 term of the Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the written agreement evidencing such Option.

9. Option Exercise Price and Consideration.

(a) The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Board, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option, 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 shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted to a person who, at the time of the grant of such Option, 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 shall be no less than 110% of the Fair Market Value per Share on the date of the grant.

(B) granted to any person, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant.

(b) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (1) cash, (2) check, (3) promissory note, (4) other Shares which (x) in the case of Shares acquired upon exercise of an Option either have been owned by the Optionee for more than six months on the date of surrender or were not acquired, directly or indirectly, from the Company, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised, (5) authorization from the Company to retain from the total number of Shares as to which the Option is exercised that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the option is exercised, (6) delivery of a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale or loan proceeds required to pay the exercise price, (7) by delivering an irrevocable subscription agreement for the Shares which irrevocably obligates the option holder to take and pay for the Shares not more than twelve months after the date of delivery of the subscription agreement, (8) any combination of the foregoing methods of payment, or (9) such other consideration and method of payment for the issuance of Shares to the extent permitted under Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company.

10. Exercise of Options or SARs.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option or SAR granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, including performance criteria with respect to the Company and/or the Participant, and as shall be permissible under the terms of the Plan.

An Option or SAR may not be exercised for a fraction of a Share.

An Option or SAR shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option or SAR by the person entitled to exercise such Option or SAR and, if an Option is to be exercised, full payment for the Shares with respect to which the Option is exercised has been received by the Company. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 8(b) of the Plan. 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 stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon 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 the stock certificate is issued, except as provided in Section 13 of the Plan.

Exercise of an Option or SAR in any manner shall result in a decrease in the number of Shares which thereafter may be available, both for purposes of the Plan and for sale under the Option or SAR, by the number of Shares as to which the Option or SAR is exercised.

(b) Termination of Employment. In the event of termination of a Participant's consulting relationship or Continuous Status as an Employee with the Company (as the case may be), such Participant may, but only within ninety (90) days (or such other period of time as is determined by the Board, with such determination in the case of an Incentive Stock Option being made at the time of grant of the Option and not exceeding ninety (90) days) after the date of such termination (but in no event later than the expiration date of the term of such Option or SAR as set forth in the written agreement evidencing such Option or SAR), exercise his Option or SAR to the extent that such Participant was entitled to exercise it at the date of such termination. To the extent that such Participant was not entitled to exercise the Option or SAR at the date of such termination, or if such Participant does not exercise such Option or SAR to the extent so entitled within the time specified herein, the Option or SAR shall terminate.

(c) Disability of Optionee. Notwithstanding the provisions of Section 9(b) above, in the event of termination of a Participant's consulting relationship or Continuous Status as an Employee as a result of his total and permanent disability (as defined in Section 22(e)(3) of the Code), such Participant may, but only within twelve (12) months from the date of such termination (but in no event later than the expiration date of the term of such Option or SAR as set forth in the written agreement evidencing such Option or SAR), exercise the Option or SAR to the extent otherwise entitled to exercise it at the date of such termination. To the extent that such Participant was not entitled to exercise the Option or SAR at the date of termination, or if such Participant does not exercise such Option or SAR to the extent so entitled within the time specified herein, the Option or SAR shall terminate.

(d) Death of Optionee. In the event of the death of a Participant, the Option or SAR may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the expiration date of the term of such Option or SAR as set forth in the written agreement evidencing such Option or SAR), by the Participant's estate or by a person who acquired the right to exercise the Option or SAR by bequest or inheritance, but only to the extent the Participant was entitled to exercise the Option or SAR at the date of death. To the extent that

such Participant was not entitled to exercise the Option or SAR at the date of death, or if such Participant's estate or any person who acquired the right to exercise the Option or SAR by bequest or inheritance does not exercise such Option or SAR to the extent so entitled within the time specified herein, the Option or SAR shall terminate.

(e) Rule 16b-3. Options or SARs granted to persons subject to Section 16(b) of the Exchange Act must comply with Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exception from Section 16 of the Exchange Act with respect to Plan transactions.

(f) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option or SAR previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Participant at the time that such offer is made.

(g) Payout Provisions. At the discretion of the Company, the payment to a Participant upon exercise of a SAR, may be in cash, in Shares of equivalent value, or in some combination thereof, subject to the availability of Shares to the Company under the Plan.

11. Non-Transferability of Options or SARs. The Option or SAR 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. The terms of the Option or SAR shall be binding upon the executors, administrators, heirs, successors and assigns of the Participant.

12. Stock Grants and Stock Purchase Rights.

(a) Awards and Rights to Purchase. Stock grants and stock purchase rights may be issued either alone, in addition to, or in tandem with other Awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will make a stock grant or offer stock purchase rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the grant or offer, including the number of Shares that such person shall be granted or entitled to purchase and, in the case of a right to purchase (i) the price to be paid [which price shall not be less than 50% of the Fair Market Value of the Shares as of the date of the offer], and (ii) the time within which such person must accept such offer, [which shall in no event exceed thirty (30) days from the date upon which the Administrator made the determination to grant the stock purchase right]. The offer shall be accepted by execution of a Restricted Stock purchase agreement, as the case may be, in the form determined by the Administrator.

(b) Other Provisions. The Restricted Stock grant agreement and purchase agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock grant agreements or purchase agreements need not be the same with respect to each purchaser.

(c) Rights as a Shareholder. Once the stock grant is completed or a stock purchase right is exercised, the grantee or purchaser shall have the rights equivalent to those of a shareholder, and shall be a shareholder when his or her grant or purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock grant is completed or the stock purchase right is exercised, except as provided in Section 13 of the Plan.

13. Stock Withholding to Satisfy Withholding Tax Obligations. At the discretion of the Administrator, Participants may satisfy withholding obligations as provided in this paragraph. When a Participant incurs tax liability in connection with an Option, stock grant, stock purchase right or SAR,

which tax liability is subject to tax withholding under applicable tax laws, and the Participant is obligated to pay the Company an amount required to be withheld under applicable tax laws, the Participant may satisfy the withholding tax obligation by electing to have the Company withhold from the Shares to be issued upon exercise of the Option or SAR, or the Shares to be issued in connection with the stock grant or stock purchase right, if any, that number of Shares having a Fair Market Value equal to the amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined (the "Tax Date").

In the event that the Company elects to make a payment to the Participant in cash upon the exercise of a SAR, the Participant may satisfy the withholding tax obligation by electing to have the Company withhold from such payment the amount required to satisfy such withholding tax obligation.

All elections by a Participant to have Shares or cash withheld for this purpose, as the case may be, shall be made in writing in a form acceptable to the Administrator and shall be subject to the following restrictions:

(a) the election must be made on or prior to the applicable Tax Date;

(b) once made, the election shall be irrevocable as to the particular Shares of the Option, stock purchase right or SAR, as to which the election is made;

(c) all elections shall be subject to the consent or disapproval of the Administrator;

(d) if the Participant is subject to Rule 16b-3, the election must comply with the applicable provisions of Rule 16b-3 and shall be subject to such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

In the event the election to have Shares or cash withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares or full amount of cash, as the case may be, with respect to which the Option, stock grant, stock purchase right or SAR is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares, or the proper amount of cash, as the case may be, on the Tax Date.

14. Adjustments Upon Changes in Capitalization or Merger. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option or SAR, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options or SARs have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or SAR, as well as the price per share of Common Stock covered by each such outstanding Option or SAR, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or SAR.

In the event of the proposed dissolution or liquidation of the Company, the Board shall notify the Participant at least fifteen (15) days prior to such proposed action. To the extent it has not been previously exercised, the Option or SAR will terminate immediately prior to the consummation of such

proposed action. In the event of a merger or consolidation of the Company with or into another corporation or the sale of all or substantially all of the Company's assets (hereinafter, a "merger"), the Option or SAR shall be assumed or an equivalent option or stock appreciation right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation. In the event that such successor corporation does not agree to assume the Option or SAR, or to substitute an equivalent option or stock appreciation right, the Board shall, in lieu of such assumption or substitution, provide for the Participant to have the right to exercise all Options or SARs previously granted to such Participant, including Options or SARs which would not otherwise be exercisable. If the Board makes an Option or SAR fully exercisable in lieu of assumption or substitution in the event of a merger, the Board shall notify the Participant that the Option or SAR shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and the Option or SAR will terminate upon the expiration of such period. For the purposes of this paragraph, the Option or SAR shall be considered assumed if, following the merger, the Option or SAR, confers the right to purchase, or receive the appreciation in Fair Market Value, as the case may be, for each Share of stock subject to the Option or SAR immediately prior to the merger, the consideration (whether stock, cash, or other securities or property) received in the merger 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 merger was not solely common stock of the successor corporation or its Parent, the Board may, with the consent of the successor corporation and the participant, provide for the consideration to be received upon the exercise of the Option or SAR, for each Share of stock subject to the Option or SAR, 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 merger or sale of assets.

15. Time of Granting Options. The date of grant of an Option or SAR shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or SAR, or such other date as is determined by the Board. Notice of the determination shall be given to each Employee or Consultant to whom an Option or SAR is so granted within a reasonable time after the date of such grant.

16. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation shall be made which would impair the rights of any Participant under any grant theretofore made, without his or her consent. In addition, to the extent necessary and desirable to comply with Rule 16b-3 under the Exchange Act or with Section 422 of the Code (or any other applicable law or regulation, including the requirements of the NASD or an established stock exchange), the Company shall obtain shareholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) Effect of Amendment or Termination. Any such amendment or termination of the Plan shall not affect Options or SARs already granted and such Options or SARs shall remain in full force and effect as if this Plan had not been amended or terminated, unless mutually agreed otherwise between the Participant and the Board, which agreement must be in writing and signed by the Participant and the Company.

17. Conditions Upon Issuance of Shares. Shares shall not be issued pursuant to the exercise of an Option or SAR unless the exercise of such Option or SAR and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option or SAR, the Company may require the person exercising such Option or SAR 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 by any of the aforementioned relevant provisions of law.

18. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

19. Agreements. Options, stock grants, stock purchase rights and SARs shall be evidenced by written agreements in such form as the Administrator shall approve from time to time.

20. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under applicable state and federal law.

21. Information to Participants. The Company shall provide to each Participant, during the period for which such Participant has one or more Options or SARs outstanding, copies of all annual reports and other information which are provided to all shareholders of the Company. Further, the Company shall provide to each such Participant, at least annually, financial statements prepared by management of the Company. The Company shall not be required to provide such information or financial statement if the issuance of Options or SARs under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

OPTION # _____

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ACCURAY INCORPORATED
1998 EQUITY INCENTIVE PLAN
INCENTIVE STOCK OPTION AGREEMENT

The Optionee represents that the Optionee is familiar with the terms and provisions of this Option Agreement, including the Right of First Refusal set forth in paragraph 11 and hereby accepts the Option subject to all of the terms and provisions thereof. The Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Option Agreement.

Date: _____ _____

Print name:

The undersigned, being the spouse of the above-named Optionee, does hereby acknowledge that the undersigned has read and is familiar with the provisions of the above Option Agreement, including, without limitation, the provisions of paragraph 11 providing a right of first refusal in favor of the Company upon certain changes in record ownership, and the undersigned hereby agrees thereto and joins therein to the extent, if any, that the agreement and joinder of the undersigned may be necessary.

Date: _____ _____

Print name:

Accuray Incorporated granted to the individual named in the attached ***Notice of Grant of Stock Options and Option Agreement*** an option to purchase certain shares of Common Stock of the Company, in the manner and subject to the provisions of this Option Agreement.

1. Definitions:

(a) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(b) "Company" shall mean Accuray Incorporated, a California corporation, and any successor corporation thereto.

(c) "Date of Option Grant" shall be as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(d) "Exercise Price" shall mean the per share price as adjusted from time to time pursuant to paragraph 9 below and as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(e) "Number of Option Shares" shall mean the number of shares of Common Stock of the Company as adjusted from time to time pursuant to paragraph 9 below defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(f) "Option" shall mean the option to purchase shares of Common Stock of the Company granted hereunder.

(g) "Option Termination Date" shall mean the date ten (10) years after the Date of Option Grant.

(h) "Optionee" shall mean the grantee of the option as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(i) "Plan" shall mean the Accuray Incorporated 1998 Equity Incentive Plan.

(j) "Vesting Schedule." Except as provided in paragraphs 7 and 8 below, the "Vesting Schedule" shall be as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

2. Status of the Option. This Option is intended to be an incentive stock option, but the Company does not represent or warrant that this Option qualifies as such. The Optionee should consult with the Optionee's own tax advisors regarding the tax effects of this Option and the requirements necessary to obtain favorable income tax treatment of Section 422 of the Code, including, but not limited to, holding period requirements.

3. Administration. All questions of interpretation concerning this Option Agreement shall be determined by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board, in accordance with the terms of the Plan. Any subsequent references herein to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted in the Plan, including, without limitation, the power to terminate or amend the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law. All determinations by the Board shall be final and binding upon all persons having an interest in the Option.

4. Exercise of the Option.

(a) Right to Exercise. The Option shall become exercisable in accordance with the Vesting Schedule set forth in Section 1 above. In no event shall the Option be exercisable for more shares than the Number of Option Shares.

(b) Method of Exercise. The Option may be exercised by written notice to the Company which must state the election to exercise the Option, the number of shares for which the Option is being exercised and such other representations and agreements as to the Optionee's investment intent with respect to such shares relating to compliance with applicable federal or state securities laws and other administrative matters as reasonably may be required pursuant to the provisions of this Option Agreement and the exercise form used by the Company. The written notice must be signed by the Optionee and is not effective until it is delivered in person or by certified or registered mail, return receipt requested, to the President of the Company prior to the termination of the Option as set forth in paragraph 6 below, accompanied by full payment of the exercise price for the number of shares being purchased.

(c) Form of Payment of Exercise Price. Such payment shall be made in cash, by check, cash equivalent, or pursuant to a "cashless exercise" in which the appropriate number of shares being purchased are retained by the Company in satisfaction of such payment obligations.

(d) Withholding. At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Optionee hereby authorizes payroll withholding and otherwise agrees to make adequate provision for foreign, federal and state tax withholding obligations of the Company, if any, which arise in connection with the Option. The Optionee is cautioned that the Option is not exercisable unless the Company's withholding obligations are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even though the Option is vested and the Company shall have no obligation to issue a certificate for such shares.

(e) Certificate Registration. The certificate or certificates for the shares as to which the Option shall be exercised shall be registered in the name of the Optionee, or, if applicable, the heirs of the Optionee and promptly delivered to such shareholder following satisfaction of the various requirements hereunder.

(f) Restrictions on Grant of the Option and Issuance of Shares. The issuance of the shares upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares upon such exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations. In addition, the Option may not be exercised unless (i) a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The Optionee is cautioned that the Option may not be exercisable unless the foregoing conditions are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even though the Option is vested. Questions concerning this restriction should be directed to the President of the Company. As a condition to the exercise of the Option, the Company may require the Optionee to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

(g) Fractional Shares. The Company at its discretion shall determine whether to issue fractional shares upon the exercise of the Option or to pay to the Optionee cash equal to the fair market value of such fractional shares.

5. Non-Transferability of the Option. The Option may be exercised during the lifetime of the Optionee only by the Optionee or the Optionee's guardian or legal representative and may not be assigned or transferred in any manner except by will or by the laws of descent and distribution. Following the death of the Optionee, the Option, to the extent unexercised and exercisable by the Optionee on the date of death, may be exercised by the Optionee's legal representative or by any person empowered to do so under the deceased Optionee's will or under the then applicable laws of descent and distribution.

6. Termination of the Option. The Option shall terminate and may no longer be exercised on the first to occur of (a) the Option Termination Date as defined above, (b) the last date for exercising the Option following termination of employment as described in paragraph 7 below, or (c) upon an "Ownership Change" to the extent provided in paragraph 8 below.

7. Termination of Employment.

(a) Termination of the Option.

(i) Termination for Cause. If the Optionee ceases to be an employee of the Company by reason of "termination for cause," as defined below, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, shall terminate on the date on which the Optionee's employment terminated. For the purposes of this paragraph 7(a)(i), "termination for cause" shall mean an involuntary termination by the Company or a voluntary termination by the Optionee as a result of or in connection with the following events:

(1) the Optionee's intentional, persistent failure, dereliction, or refusal to perform such duties as are reasonably assigned to him or her by the officers and directors of the Company from time to time; or

(2) the Optionee's fraud, dishonesty, or other deliberate injury to the Company in the performance of his or her duties; or

(3) the Optionee's conviction of a crime which constitutes a felony involving moral turpitude, fraud or deceit in the jurisdiction in which the Optionee is employed, regardless of whether such crime involves the Company; or

(4) the Optionee's material breach of his or her employment agreement or willful, improper disclosure of confidential information relating to the Company.

(ii) Death or Disability. If the Optionee ceases to be an employee of the Company by reason of the death or disability of the Optionee within the meaning of Section 422(c) of the Code, the Option, to the extent unexercised by the Optionee may be exercised by the Optionee (or the Optionee's legal representative) at any time prior to the expiration of one (1) year from the date on which the Optionee's employment terminated, but in any event no later than the Option Termination Date.

(iii) Other Termination. If the Optionee ceases to be an employee of the Company for any reason, except death or disability within the meaning of Section 422(c) of the Code or "termination for cause," as defined in paragraph 7(a)(i) above, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, may be exercised by the Optionee within three (3) months after the date on which the Optionee's employment terminated, but in any event no later than the Option Termination Date.

Except as provided in this paragraph 7(a), the Option shall terminate and may not be exercised after the Optionee ceases to be an employee of the Company.

(b) Extension if Exercise Prevented by Law. Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above is prevented by the provisions of paragraph 4(f) above, the Option shall remain exercisable until three (3) months after the date the Optionee is notified by the Company that the Option is exercisable, but in any event no later than the Option Termination Date.

8. Ownership Change.

(a) In the event of (i) the acquisition of the Company, including a merger or consolidation of the Company with or into another corporation where the existing shareholders do not retain a majority of the beneficial interest in the voting stock of the Company, (ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange, or transfer to one or more parent or subsidiary corporations of the Company), the successor entity may either assume the Option or substitute it with an equivalent option, or the Board shall provide for the Optionee to have the right to exercise all Options previously granted including Options that would otherwise not be exercisable, in accordance with the provisions of the Plan.

(b) In the event of a proposed liquidation or dissolution of the Company, the Board shall notify the Optionee at least fifteen days prior to the proposed action.

In the event of an Ownership Change, the Option shall terminate and cease to be outstanding effective as of the date of the Ownership Change to the extent that the Option is neither assumed or substituted for in connection with the Ownership Change nor exercised as of the date of the Ownership Change.

9. Effect of Change in Stock Subject to the Option. Appropriate adjustments shall be made in the number, exercise price and class of shares of stock subject to the Option in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or like change in the capital structure of the Company. In the event a majority of the shares which are of the same class as the shares that are subject to the Option are exchanged for, converted into, or otherwise become shares of another corporation (the "New Shares"), the Company may unilaterally amend the Option to provide that the Option is exercisable for New Shares. In the event of any such amendment, the number of shares and the exercise price shall be adjusted in a fair and equitable manner.

10. Rights as a Shareholder or Employee. The Optionee shall have no rights as a shareholder with respect to any shares covered by the Option until the date of the issuance of a certificate or certificates for the shares for which the Option has been exercised. No adjustment shall be made for dividends or distributions or other rights for which the record date is prior to the date such certificate or certificates are issued, except as provided in paragraph 9 above. Nothing in the Option shall confer upon the Optionee any right to continue in the employ of the Company or interfere in any way with any right of the Company to terminate the Optionee's employment at any time.

11. Right of First Refusal.

(a) Right of First Refusal. In the event the Optionee proposes to sell, pledge, or otherwise transfer any shares acquired upon the exercise of the Option (the "Transfer Shares") to any person or entity, the Company shall have the right to repurchase the Transfer Shares under the terms and subject to the conditions set forth in this paragraph 11 (the "Right of First Refusal").

(b) Notice of Proposed Transfer. Prior to any proposed transfer of the Transfer Shares, the Optionee shall give a written notice (the "Transfer Notice") to the Company describing fully the proposed transfer, including the number of Transfer Shares, the name and address of the proposed transferee (the "Proposed Transferee") and, if the transfer is voluntary, the proposed transfer price and containing such information necessary to show the bona fide nature of the proposed transfer. In the event of a bona fide gift or involuntary transfer, the proposed transfer price shall be deemed to be the fair market value of the Transfer Shares as determined by the Company in good faith. In the event the Optionee proposes to transfer any shares acquired upon the exercise of the Option to more than one (1) Proposed Transferee, the Optionee shall provide a separate Transfer Notice for the proposed transfer to each Proposed Transferee. The Transfer Notice shall be signed by both the Optionee and the Proposed Transferee and must constitute a binding commitment of the Optionee and the Proposed Transferee for the transfer of the Transfer Shares to the Proposed Transferee subject only to the Right of First Refusal.

(c) Bona Fide Transfer. In the event that the Company shall determine that the information provided by the Optionee in the Transfer Notice is insufficient to establish the bona fide nature of a proposed voluntary transfer, the Company shall give the Optionee written notice of the Optionee's failure to comply with the procedure described in this paragraph 11 and the Optionee shall have no right to transfer the Transfer Shares without first complying with the procedure described in this paragraph 11. The Optionee shall not be permitted to transfer the Transfer Shares if the proposed transfer is not bona fide.

(d) Exercise of the Right of First Refusal. In the event the proposed transfer is deemed to be bona fide, the Company shall have the right to purchase all or a portion of the Transfer Shares at the purchase price and on the terms set forth in the Transfer Notice by delivery to the Optionee of a notice of exercise of the Right of First Refusal within thirty (30) days after the date the Transfer Notice is delivered to the Company. The Company's exercise or failure to exercise the Right of First Refusal with respect to any proposed transfer described in a Transfer Notice shall not affect the Company's ability to exercise the Right of First Refusal with respect to any proposed transfer described in any other Transfer Notice, whether or not such other Transfer Notice is

issued by the Optionee or issued by a person other than the Optionee with respect to a proposed transfer to the same Proposed Transferee. If the Company exercises the Right of First Refusal, the Company and the Optionee shall thereupon consummate the sale of the Transfer Shares to the Company on the terms set forth in the Transfer Notice within sixty (60) days after the date of the Transfer Notice is delivered to the Company (unless a longer period is offered by the Proposed Transferee); provided, however, that in the event the Transfer Notice provides for the payment for the Transfer Shares other than in cash, the Company shall have the option of paying for the Transfer Shares by the discounted cash equivalent of the consideration described in the Transfer Notice as reasonably determined by the Company. For purposes of the foregoing, cancellation of any indebtedness of the Optionee shall be treated as payment to the Optionee in cash to the extent of the unpaid principal and any accrued interest canceled.

(e) Failure to Exercise the Right of First Refusal. If the Company fails to exercise the Right of First Refusal in full within the period specified in paragraph 11(d) above, the Optionee may conclude a transfer to the Proposed Transferee of the Transfer Shares on the terms and conditions described in the Transfer Notice, provided such transfer occurs not later than one hundred twenty (120) days following delivery to the Company of the Transfer Notice. The Company shall have the right to demand further assurances from the Optionee and the Proposed Transferee (in a form satisfactory to the Company) that the transfer of the Transfer Shares was actually carried out on the terms and conditions described in the Transfer Notice. No Transfer Shares shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed transfer as bona fide. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance by the Optionee with the procedure described in this paragraph 11.

(f) Transferees of the Transfer Shares. All transferees of the Transfer Shares or any interest therein, other than the Company, shall be required as a condition of such transfer to agree in writing (in a form satisfactory to the Company) that such transferee shall receive and hold such Transfer Shares or interests subject to the provisions of this paragraph 11 providing for the Right of First Refusal with respect to any subsequent transfer. Any sale or transfer of any shares acquired upon exercise of the Option shall be void unless the provisions of this paragraph 11 are met.

(g) Assignment of the Right of First Refusal. The Company shall have the right to assign the Right of First Refusal at any time, whether or not the Optionee has attempted a transfer, to one (1) or more persons as may be selected by the Company.

12. Stock Dividends Subject to Option Agreement. If, from time to time, there is any stock dividend, stock split, or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of this Option Agreement, then in such event any and all new substituted or additional securities to which the Optionee is entitled by reason of the Optionee's ownership of the shares acquired upon exercise of the Option shall be immediately subject to the Right of First Refusal with the same force and effect as the shares subject to the Right of First Refusal immediately before such event.

13. Notice of Sales Upon Disqualifying Disposition. The Optionee shall dispose of the shares acquired pursuant to the Option only in accordance with the provisions of this Option Agreement. In addition, the Optionee shall promptly notify the President of the Company if the Optionee disposes of any of the shares acquired pursuant to the Option within one (1) year from the date the Optionee exercises all or part of the Option or within two (2) years of the date of grant of the Option. Until such time as the Optionee disposes of such shares in a manner consistent with the provisions of this Option Agreement, the Optionee shall hold all shares acquired pursuant to the Option in the

Optionee's name (and not in the name of any nominee) for the one-year period immediately after exercise of the Option and the two-year period immediately after grant of the Option. At any time during the one-year or two-year periods set forth above, the Company may place a legend or legends on any certificate or certificates representing shares acquired pursuant to the Option requesting the transfer agent for the Company's stock to notify the Company of any such transfers. The obligation of the Optionee to notify the company of any such transfer shall continue notwithstanding that a legend has been placed on the certificate or certificates pursuant to the preceding sentence.

14. Legends. The Company may at any time place legends referencing the Right of First Refusal set forth in paragraph 11 above and any applicable federal or state securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Optionee shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Optionee in order to effectuate the provisions of this paragraph 14. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

(a) "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 OR RULE 701 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT."

(b) Any legend required to be placed thereon by applicable law.

(c) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION OR ITS ASSIGNEE SET FORTH IN AN AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION."

15. Initial Public Offerings. The Optionee hereby agrees that in the event of any underwritten public offering of stock, including an initial public offering of stock, made by the Company pursuant to an effective registration statement filed under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for such period of time from and after the effective date of such registration statement as may be established by the underwriter for such public offering; provided, however, that such period of time shall not exceed one hundred eighty (180) days from the effective date of the registration statement to be filed in connection with such public offering. The foregoing limitation shall not apply to shares registered in the initial public offering under the Securities Act. The Optionee shall be subject to this paragraph provided and only if the officers and directors of the Company are also subject to similar arrangements.

16. Binding Effect. This Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

17. Termination or Amendment. The Board, including any duly appointed committee of the Board, may terminate or amend the Plan at any time; provided, however, that no such action shall

deprive any person, without such person's consent, of any rights previously granted pursuant to this Option Agreement.

18. Incorporation of Terms of Plan; Integrated Agreement. The terms of the Plan are incorporated herein by reference. This Option Agreement constitutes the entire understanding and agreement of the Optionee and the Company with respect to the subject matter contained herein, and there are no agreements, understandings, restrictions, representations, or warranties among the Optionee and the Company other than those as set forth or provided for herein. To the extent contemplated herein, the provisions of this Option Agreement shall survive any exercise of the Option and shall remain in full force and effect.

19. Applicable Law. This Option Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its choice of law provisions.

OPTION # _____

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ACCURAY INCORPORATED
1998 EQUITY INCENTIVE PLAN

NONQUALIFIED STOCK OPTION AGREEMENT

The Optionee represents that the Optionee is familiar with the terms and provisions of this Option Agreement, including the Right of First Refusal set forth in paragraph 11 and hereby accepts the Option subject to all of the terms and provisions thereof. The Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Option Agreement.

Date: _____ _____

Print name:

The undersigned, being the spouse of the above-named Optionee, does hereby acknowledge that the undersigned has read and is familiar with the provisions of the above Option Agreement, including, without limitation, the provisions of paragraph 11 providing a right of first refusal in favor of the Company upon certain changes in record ownership, and the undersigned hereby agrees thereto and joins therein to the extent, if any, that the agreement and joinder of the undersigned may be necessary.

Date: _____ _____

Print name:

Accuray Incorporated granted to the individual named in the attached ***Notice of Grant of Stock Options and Option Agreement*** an option to purchase certain shares of Common Stock of the Company, in the manner and subject to the provisions of this Option Agreement.

1. Definitions:

(a) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(b) "Company" shall mean Accuray Incorporated, a California corporation, and any successor corporation thereto.

(c) "Date of Option Grant" shall be as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(d) "Exercise Price" shall mean the per share price as adjusted from time to time pursuant to paragraph 9 below and as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(e) "Number of Option Shares" shall mean the number of shares of Common Stock of the Company as adjusted from time to time pursuant to paragraph 9 below defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(f) "Option" shall mean the option to purchase shares of Common Stock of the Company granted hereunder.

(g) "Option Termination Date" shall mean the date ten (10) years after the Date of Option Grant.

(h) "Optionee" shall mean the grantee of the option as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

(i) "Plan" shall mean the Accuray Incorporated 1998 Equity Incentive Plan.

(j) "Vesting Schedule." Except as provided in paragraphs 7 and 8 below, the "Vesting Schedule" shall be as defined in the ***Notice of Grant of Stock Options and Option Agreement*** attached.

2. Status of the Option. This Option is intended to be a nonqualified stock option and shall not be treated as an incentive stock option described in Section 422 of the Code.

3. Administration. All questions of interpretation concerning this Option Agreement shall be determined by the Board of Directors of the Company (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board, in accordance with the terms of the Plan. Any subsequent references herein to the Board shall also mean the committee if such committee has been appointed and, unless the powers of the committee have been specifically limited, the committee shall have all of the powers of the Board granted in the Plan, including, without limitation, the power to terminate or amend the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law. All determinations by the Board shall be final and binding upon all persons having an interest in the Option.

4. Exercise of the Option.

(a) Right to Exercise. The Option shall become exercisable in accordance with the Vesting Schedule set forth in Section 1 above. In no event shall the Option be exercisable for more shares than the Number of Option Shares.

(b) Method of Exercise. The Option may be exercised by written notice to the Company which must state the election to exercise the Option, the number of shares for which the Option is being exercised and such other representations and agreements as to the Optionee's investment intent with respect to such shares relating to compliance with applicable federal or state securities laws and other administrative matters as reasonably may be required pursuant to the provisions of this Option Agreement and the exercise form used by the Company. The written notice must be signed by the Optionee and is not effective until it is delivered in person or by certified or registered mail, return receipt requested, to the President of the Company prior to the termination of the Option as set forth in paragraph 6 below, accompanied by full payment of the exercise price for the number of shares being purchased.

(c) Form of Payment of Exercise Price. Such payment shall be made in cash or by check.

(d) Withholding. At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Optionee hereby authorizes payroll withholding and otherwise agrees to make adequate provision for foreign, federal and state tax withholding obligations of the Company, if any, which arise in connection with the Option. The Optionee is cautioned that the Option is not exercisable unless the Company's withholding obligations are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even though the Option is vested and the Company shall have no obligation to issue a certificate for such shares.

(e) Certificate Registration. The certificate or certificates for the shares as to which the Option shall be exercised shall be registered in the name of the Optionee, or, if applicable, the heirs of the Optionee and promptly delivered to such shareholder following satisfaction of the various requirements hereunder.

(f) Restrictions on Grant of the Option and Issuance of Shares. The issuance of the shares upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the

issuance of shares upon such exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations. In addition, the Option may not be exercised unless (i) a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The Optionee is cautioned that the Option may not be exercisable unless the foregoing conditions are satisfied. Accordingly, the Optionee may not be able to exercise the Option when desired even though the Option is vested. Questions concerning this restriction should be directed to the President of the Company. As a condition to the exercise of the Option, the Company may require the Optionee to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

(g) Fractional Shares. The Company at its discretion shall determine whether to issue fractional shares upon the exercise of the Option or to pay to the Optionee cash equal to the fair market value of such fractional shares.

5. Non-Transferability of the Option. The Option may be exercised during the lifetime of the Optionee only by the Optionee or the Optionee's guardian or legal representative and may not be assigned or transferred in any manner except by will or by the laws of descent and distribution. Following the death of the Optionee, the Option, to the extent unexercised and exercisable by the Optionee on the date of death, may be exercised by the Optionee's legal representative or by any person empowered to do so under the deceased Optionee's will or under the then applicable laws of descent and distribution.

6. Termination of the Option. The Option shall terminate and may no longer be exercised on the first to occur of (a) the Option Termination Date as defined above, (b) the last date for exercising the Option following termination of employment as described in paragraph 7 below, or (c) upon an "Ownership Change" to the extent provided in paragraph 8 below.

7. Termination of Employment.

(a) Termination of the Option.

(i) Termination for Cause. If the Optionee is an employee at the time the option is granted and thereafter ceases to be an employee of the Company by reason of "termination for cause," as defined below, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, shall terminate on the date on which the Optionee's employment terminated. For the purposes of this paragraph 7(a)(i), "termination for cause" shall mean an involuntary termination by the Company or a voluntary termination by the Optionee as a result of or in connection with the following events:

(1) the Optionee's intentional, persistent failure, dereliction, or refusal to perform such duties as are reasonably assigned to him or her by the officers and directors of the Company from time to time; or

(2) the Optionee's fraud, dishonesty, or other deliberate injury to the Company in the performance of his or her duties; or

(3) the Optionee's conviction of a crime which constitutes a felony involving moral turpitude, fraud or deceit in the jurisdiction in which the Optionee is employed, regardless of whether such crime involves the Company; or

(4) the Optionee's material breach of his or her employment agreement or willful, improper disclosure of confidential information relating to the Company.

(ii) Death. Upon the death of the Optionee, the Option, to the extent unexercised by the Optionee may be exercised by the Optionee (or the Optionee's legal representative) at any time prior to the expiration of one (1) year from the date of death, but in any event no later than the Option Termination Date.

(iii) Other Termination. If the Optionee is an employee at the time the option is granted and thereafter ceases to be an employee of the Company for any reason, except death or "termination for cause," as defined in paragraph 7(a)(i) above, the Option, to the extent unexercised and exercisable by the Optionee on the date on which the Optionee ceased to be an employee, may be exercised by the Optionee within three (3) months after the date on which the Optionee's employment terminated, but in any event no later than the Option Termination Date.

Except as provided in this paragraph 7(a), the Option shall terminate and may not be exercised after the Optionee, if an employee on the date the option is granted, ceases to be an employee of the Company.

(b) Extension if Exercise Prevented by Law. Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth above is prevented by the provisions of paragraph 4(f) above, the Option shall remain exercisable until three (3) months after the date the Optionee is notified by the Company that the Option is exercisable, but in any event no later than the Option Termination Date.

8. Ownership Change. An "Ownership Change" shall be deemed to have occurred in the event any of the following occurs with respect to the Company:

(a) In the event of (i) the acquisition of the Company, including a merger or consolidation of the Company with or into another corporation where the existing shareholders do not retain a majority of the beneficial interest in the voting stock of the Company, (ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the stock of the Company where shareholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange, or transfer to one or more parent or subsidiary corporations of the Company), the successor entity may either assume the Option or substitute it with an equivalent option, or the Board shall provide for the Optionee to have the right to exercise all Options previously granted including Options that would otherwise not be exercisable, in accordance with the provisions of the Plan.

(b) In the event of a proposed liquidation or dissolution of the Company, the Board shall notify the Optionee at least fifteen days prior to the proposed action.

In the event of an Ownership Change, the Option shall terminate and cease to be outstanding effective as of the date of the Ownership Change to the extent that the Option is neither assumed or substituted for in connection with the Ownership Change nor exercised as of the date of the Ownership Change.

9. Effect of Change in Stock Subject to the Option. Appropriate adjustments shall be made in the number, exercise price and class of shares of stock subject to the Option in the event of a stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or like change in the capital structure of the Company. In the event a majority of the shares which are of the same class as the shares that are subject to the Option are exchanged for, converted into, or otherwise become

shares of another corporation (the "New Shares"), the Company may unilaterally amend the Option to provide that the Option is exercisable for New Shares. In the event of any such amendment, the number of shares and the exercise price shall be adjusted in a fair and equitable manner.

10. Rights as a Shareholder or Employee. The Optionee shall have no rights as a shareholder with respect to any shares covered by the Option until the date of the issuance of a certificate or certificates for the shares for which the Option has been exercised. No adjustment shall be made for dividends or distributions or other rights for which the record date is prior to the date such certificate or certificates are issued, except as provided in paragraph 9 above. Nothing in the Option shall confer upon the Optionee any right to continue in the employ of the Company or, in the case of an Optionee who is an employee on the date the option is granted, interfere in any way with any right of the Company to terminate the Optionee's employment at any time.

11. Right of First Refusal.

(a) Right of First Refusal. In the event the Optionee proposes to sell, pledge, or otherwise transfer any shares acquired upon the exercise of the Option (the "Transfer Shares") to any person or entity, the Company shall have the right to repurchase the Transfer Shares under the terms and subject to the conditions set forth in this paragraph 11 (the "Right of First Refusal").

(b) Notice of Proposed Transfer. Prior to any proposed transfer of the Transfer Shares, the Optionee shall give a written notice (the "Transfer Notice") to the Company describing fully the proposed transfer, including the number of Transfer Shares, the name and address of the proposed transferee (the "Proposed Transferee") and, if the transfer is voluntary, the proposed transfer price and containing such information necessary to show the bona fide nature of the proposed transfer. In the event of a bona fide gift or involuntary transfer, the proposed transfer price shall be deemed to be the fair market value of the Transfer Shares as determined by the Company in good faith. In the event the Optionee proposes to transfer any shares acquired upon the exercise of the Option to more than one (1) Proposed Transferee, the Optionee shall provide a separate Transfer Notice for the proposed transfer to each Proposed Transferee. The Transfer Notice shall be signed by both the Optionee and the Proposed Transferee and must constitute a binding commitment of the Optionee and the Proposed Transferee for the transfer of the Transfer Shares to the Proposed Transferee subject only to the Right of First Refusal.

(c) Bona Fide Transfer. In the event that the Company shall determine that the information provided by the Optionee in the Transfer Notice is insufficient to establish the bona fide nature of a proposed voluntary transfer, the Company shall give the Optionee written notice of the Optionee's failure to comply with the procedure described in this paragraph 11 and the Optionee shall have no right to transfer the Transfer Shares without first complying with the procedure described in this paragraph 11. The Optionee shall not be permitted to transfer the Transfer Shares if the proposed transfer is not bona fide.

(d) Exercise of the Right of First Refusal. In the event the proposed transfer is deemed to be bona fide, the Company shall have the right to purchase all or a portion of the Transfer Shares at the purchase price and on the terms set forth in the Transfer Notice by delivery to the Optionee of a notice of exercise of the Right of First Refusal within thirty (30) days after the date the Transfer Notice is delivered to the Company. The Company's exercise or failure to exercise the Right of First Refusal with respect to any proposed transfer described in a Transfer Notice shall not affect the Company's ability to exercise the Right of First Refusal with respect to any proposed transfer described in any other Transfer Notice, whether or not such other Transfer Notice is issued by the Optionee or issued by a person other than the Optionee with respect to a proposed transfer to the same Proposed Transferee. If the Company exercises the Right of First Refusal, the Company and the Optionee shall thereupon consummate the sale of the Transfer Shares to the Company on the terms set forth in the Transfer Notice within sixty (60) days after the date of the

Transfer Notice is delivered to the Company (unless a longer period is offered by the Proposed Transferee); provided, however, that in the event the Transfer Notice provides for the payment for the Transfer Shares other than in cash, the Company shall have the option of paying for the Transfer Shares by the discounted cash equivalent of the consideration described in the Transfer Notice as reasonably determined by the Company. For purposes of the foregoing, cancellation of any indebtedness of the Optionee shall be treated as payment to the Optionee in cash to the extent of the unpaid principal and any accrued interest canceled.

(e) Failure to Exercise the Right of First Refusal. If the Company fails to exercise the Right of First Refusal in full within the period specified in paragraph 11(d) above, the Optionee may conclude a transfer to the Proposed Transferee of the Transfer Shares on the terms and conditions described in the Transfer Notice, provided such transfer occurs not later than one hundred twenty (120) days following delivery to the Company of the Transfer Notice. The Company shall have the right to demand further assurances from the Optionee and the Proposed Transferee (in a form satisfactory to the Company) that the transfer of the Transfer Shares was actually carried out on the terms and conditions described in the Transfer Notice. No Transfer Shares shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed transfer as bona fide. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance by the Optionee with the procedure described in this paragraph 11.

(f) Transferees of the Transfer Shares. All transferees of the Transfer Shares or any interest therein, other than the Company, shall be required as a condition of such transfer to agree in writing (in a form satisfactory to the Company) that such transferee shall receive and hold such Transfer Shares or interests subject to the provisions of this paragraph 11 providing for the Right of First Refusal with respect to any subsequent transfer. Any sale or transfer of any shares acquired upon exercise of the Option shall be void unless the provisions of this paragraph 11 are met.

(g) Assignment of the Right of First Refusal. The Company shall have the right to assign the Right of First Refusal at any time, whether or not the Optionee has attempted a transfer, to one (1) or more persons as may be selected by the Company.

12. Stock Dividends Subject to Option Agreement. If, from time to time, there is any stock dividend, stock split, or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of this Option Agreement, then in such event any and all new substituted or additional securities to which the Optionee is entitled by reason of the Optionee's ownership of the shares acquired upon exercise of the Option shall be immediately subject to the Right of First Refusal with the same force and effect as the shares subject to the Right of First Refusal immediately before such event.

13. Legends. The Company may at any time place legends referencing the Right of First Refusal set forth in paragraph 11 above and any applicable federal or state securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Optionee shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Optionee in order to effectuate the provisions of this paragraph 13. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

(a) "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH

SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 OR RULE 701 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY, STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT."

(b) Any legend required to be placed thereon by applicable law.

(c) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION OR ITS ASSIGNEE SET FORTH IN AN AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION."

14. Initial Public Offerings. The Optionee hereby agrees that in the event of any underwritten public offering of stock, including an initial public offering of stock, made by the Company pursuant to an effective registration statement filed under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of any shares of stock of the Company or any rights to acquire stock of the Company for such period of time from and after the effective date of such registration statement as may be established by the underwriter for such public offering; provided, however, that such period of time shall not exceed one hundred eighty (180) days from the effective date of the registration statement to be filed in connection with such public offering. The foregoing limitation shall not apply to shares registered in the initial public offering under the Securities Act. The Optionee shall be subject to this paragraph provided and only if the officers and directors of the Company are also subject to similar arrangements.

15. Binding Effect. This Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

16. Termination or Amendment. The Board, including any duly appointed committee of the Board, may terminate or amend the Plan at any time; provided, however, that no such action shall deprive any person, without such person's consent, of any rights previously granted pursuant to this Option Agreement.

17. Incorporation of Terms of Plan; Integrated Agreement. The terms of the Plan are incorporated herein by reference. This Option Agreement constitutes the entire understanding and agreement of the Optionee and the Company with respect to the subject matter contained herein, and there are no agreements, understandings, restrictions, representations, or warranties among the Optionee and the Company other than those as set forth or provided for herein. To the extent contemplated herein, the provisions of this Option Agreement shall survive any exercise of the Option and shall remain in full force and effect.

18. Applicable Law. This Option Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its choice of law provisions.

QuickLinks

Exhibit 10.7

ACCURAY INCORPORATED

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("*Agreement*") is effective as of , 2006, by and between Accuray Incorporated, a Delaware corporation (the "*Company*"), and ("*Indemnitee*").

A. The Company recognizes the continued difficulty in obtaining liability insurance for its directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates, the significant increases in the cost of such insurance and the general reductions in the coverage of such insurance.

B. The Company further recognizes the substantial increase in corporate litigation in general, subjecting directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited.

C. The current protection available to directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company may not be adequate under the present circumstances, and directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company (or persons who may be alleged or deemed to be the same), including the Indemnitee, may not be willing to continue to serve or be associated with the Company in such capacities without additional protection.

D. The Company (a) desires to attract and retain the involvement of highly qualified persons, such as Indemnitee, to serve and be associated with the Company, and (b) accordingly, wishes to provide for the indemnification and advancement of expenses to the Indemnitee to the maximum extent permitted by law.

E. In view of the considerations set forth above, the Company desires that Indemnitee shall be indemnified and advanced expenses by the Company as set forth herein.

In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Certain Definitions.*

(a) "*Change in Control*" shall be deemed to have occurred if, on or after the date of this Agreement, (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company's then outstanding Voting Securities (as defined below), (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company and any new director whose election by the Board of Directors or nomination for election by the Company's shareholders was approved by a vote of at least two thirds ($^2/_3$) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or

(iv) the shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company's assets.

(b) "*Claim*" shall mean with respect to a Covered Event (as defined below): any threatened, asserted, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, investigative or other.

(c) References to the "*Company*" shall include, in addition to Accuray Incorporated, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Accuray Incorporated (or any of its wholly owned subsidiaries) is a party, which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) "*Covered Event*" shall mean any event or occurrence related to the fact that Indemnitee is or was a director, officer, employee, agent or fiduciary of the Company, or any subsidiary of the Company, or is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action or inaction on the part of Indemnitee while serving in such capacity.

(e) "*Expenses*" shall mean any and all losses, claims, damages expenses and liabilities, joint or several (including attorneys' fees and all other costs, expenses and obligations incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or to participate in, any action, suit, proceeding, alternative dispute resolution mechanism, hearing, inquiry or investigation), judgments, fines, penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred, of any Claim and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement.

(f) "*Expense Advance*" shall mean a payment to Indemnitee pursuant to Section 3 of Expenses in advance of the settlement of or final judgement in any action, suit, proceeding or alternative dispute resolution mechanism, hearing, inquiry or investigation, which constitutes a Claim.

(g) "*Independent Legal Counsel*" shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(d) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the last three (3) years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnity agreements).

(h) References to "*other enterprises*" shall include employee benefit plans; references to "*fines*" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "*serving at the request of the Company*" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably

believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "*not opposed to the best interests of the Company*" as referred to in this Agreement.

(i) "*Reviewing Party*" shall mean, subject to the provisions of Section 2(d), any person or body appointed by the Board of Directors in accordance with applicable law to review the Company's obligations hereunder and under applicable law, which may include a member or members of the Company's Board of Directors, Independent Legal Counsel or any other person or body not a party to the particular Claim for which Indemnitee is seeking indemnification.

(j) "*Section*" refers to a section of this Agreement unless otherwise indicated.

(k) "*Voting Securities*" shall mean any securities of the Company that vote generally in the election of directors.

2. *Indemnification.*

(a) *Indemnification of Expenses*. Subject to the provisions of Section 2(b) below, the Company shall indemnify Indemnitee for Expenses to the fullest extent permitted by law if Indemnitee was or is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, any Claim (whether by reason of or arising in part out of a Covered Event), including all interest, assessments and other charges incurred in connection with or in respect of such Expenses.

(b) *Review of Indemnification Obligations*. Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified hereunder under applicable law, (i) the Company shall have no further obligation under Section 2(a) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid in indemnifying Indemnitee (within thirty (30) days after such determination); *provided*, *however*, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(c) *Indemnitee Rights on Unfavorable Determination; Binding Effect*. If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and, subject to the provisions of Section 15, the Company hereby consents to service of process and to appear in any such proceeding. Absent such litigation, any determination by any Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

(d) *Selection of Reviewing Party; Change in Control*. If there has not been a Change in Control, any Reviewing Party shall be selected by the Board of Directors, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Company's Board of Directors who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnification of Expenses under this Agreement or any other agreement or under the Company's

Certificate of Incorporation or bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by the Indemnitee and approved by Company (which approval shall not be unreasonably withheld). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee, and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless (i) the Company otherwise determines or (ii) any Indemnitee shall provide a written statement setting forth in detail a reasonable objection to such Independent Legal Counsel representing other Indemnitees.

(e) *Mandatory Payment of Expenses*. Notwithstanding any other provision of this Agreement other than Section 10 hereof, to the extent that Indemnitee has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Claim, Indemnitee shall be indemnified against all Expenses incurred by Indemnitee in connection therewith.

(f) *Contribution*. If the indemnification provided for in this Agreement is for any reason held by a court of competent jurisdiction to be unavailable to an Indemnitee, then in lieu of indemnifying Indemnitee thereunder, the Company shall contribute to the amount paid or payable by Indemnitee as a result of such Expenses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and Indemnitee, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and Indemnitee in connection with the action or inaction which resulted in such Expenses, as well as any other relevant equitable considerations. In connection with the registration of the Company's securities, the relative benefits received by the Company and Indemnitee shall be deemed to be in the same respective proportions that the net proceeds from the offering (before deducting expenses) received by the Company and Indemnitee, in each case as set forth in the table on the cover page of the applicable prospectus, bear to the aggregate public offering price of the securities so offered. The relative fault of the Company and Indemnitee shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and Indemnitee agree that it would not be just and equitable if contribution pursuant to this Section 2(f) were determined by pro rata or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. In connection with the registration of the Company's securities, in no event shall Indemnitee be required to contribute any amount under this Section 2(f) in excess of the net proceeds received by Indemnitee from its sale of securities under such registration statement. No person found guilty of fraudulent misrepresentation (within the meaning of Section 11(1) of the Securities Act) shall be entitled to contribution from any person who was not found guilty of such fraudulent misrepresentation.

3. *Expense Advances.*

(a) *Obligation to Make Expense Advances*. The Company shall make Expense Advances to Indemnitee upon receipt of a written undertaking by or on behalf of the Indemnitee to repay such

amounts if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified therefor by the Company.

(b) *Form of Undertaking*. Any written undertaking by the Indemnitee to repay any Expense Advances hereunder shall be unsecured and no interest shall be charged thereon.

4. ***Procedures for Indemnification and Expense Advances***.

(a) *Timing of Payments*. All payments of Expenses (including without limitation Expense Advances) by the Company to the Indemnitee pursuant to this Agreement shall be made to the fullest extent permitted by law as soon as practicable after written demand by Indemnitee therefor is presented to the Company, but in no event later than forty-five (45) days after such written demand by Indemnitee is presented to the Company, except in the case of Expense Advances, which shall be made no later than twenty (20) days after such written demand by Indemnitee is presented to the Company.

(b) *Notice/Cooperation by Indemnitee*. Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified or Indemnitee's right to receive Expense Advances under this Agreement, give the Company notice in writing as soon as practicable of any Claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the President or Chief Executive Officer of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) *No Presumptions; Burden of Proof*. For purposes of this Agreement, the termination of any Claim by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement or applicable law, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. In connection with any determination by any Reviewing Party or otherwise as to whether the Indemnitee is entitled to be indemnified hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

(d) *Notice to Insurers*. If, at the time of the receipt by the Company of a notice of a Claim pursuant to Section 4(b) hereof, the Company has liability insurance in effect which may cover such Claim, the Company shall give prompt notice of the commencement of such Claim to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policies.

(e) *Selection of Counsel*. In the event the Company shall be obligated hereunder to provide indemnification for or make any Expense Advances with respect to the Expenses of any Claim, the Company, if appropriate, shall be entitled to assume the defense of such Claim with counsel approved by Indemnitee (which approval shall not be unreasonably withheld) upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently employed by or on behalf of Indemnitee with respect to the same Claim; *provided*, *however*, that

(i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Claim at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Claim, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification or Expense Advances hereunder. The Company shall have the right to conduct such defense as it sees fit in its sole discretion, including the right to settle any claim, action or proceeding against Indemnitee without the consent of Indemnitee, provided that the terms of such settlement include either: (i) a full release of Indemnitee by the claimant from all liabilities or potential liabilities under such claim; or (ii), in the event such full release is not obtained, the terms of such settlement do not limit any indemnification right Indemnitee may now, or hereafter, be entitled to under this Agreement, the Company's Certificate of Incorporation, bylaws, any agreement, any vote of shareholders or disinterested directors, the General Corporation Law of the State of Delaware (the "DGCL") or otherwise.

5. ***Additional Indemnification Rights; Nonexclusivity.***

(a) *Scope*. The Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Certificate of Incorporation, the Company's bylaws or by statute. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of a Delware corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 10(a) hereof.

(b) *Nonexclusivity*. The indemnification and the payment of Expense Advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its bylaws, any other agreement, any vote of shareholders or disinterested directors, the DGCL, or otherwise. The indemnification and the payment of Expense Advances provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

6. ***No Duplication of Payments.*** The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Certificate of Incorporation, bylaws or otherwise) of the amounts otherwise payable hereunder.

7. ***Partial Indemnification.*** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Claim, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

8. ***Mutual Acknowledgment.*** Both the Company and Indemnitee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Company from indemnifying its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the

Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

9. ***Liability Insurance.*** To the extent the Company maintains liability insurance applicable to directors, officers, employees, agents or fiduciaries, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

10. ***Exceptions.*** Notwithstanding any other provision of this Agreement, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) *Excluded Action or Omissions*. To indemnify Indemnitee for Expenses resulting from acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification under this Agreement or applicable law; *provided, however*, that notwithstanding any limitation set forth in this Section 10(a) regarding the Company's obligation to provide indemnification, Indemnitee shall be entitled under Section 3 to receive Expense Advances hereunder with respect to any such Claim unless and until a court having jurisdiction over the Claim shall have made a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee has engaged in acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification under this Agreement or applicable law.

(b) *Claims Initiated by Indemnitee*. To indemnify or make Expense Advances to Indemnitee with respect to Claims initiated or brought voluntarily by Indemnitee and not by way of defense, counterclaim or cross claim, except (i) with respect to actions or proceedings brought to establish or enforce a right to indemnification under this Agreement or any other agreement or insurance policy or under the Company's Certificate of Incorporation or bylaws now or hereafter in effect relating to Claims for Covered Events, (ii) in specific cases if the Board of Directors has approved the initiation or bringing of such Claim, or (iii) as otherwise required under Section 145 of the DGCL, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, Expense Advances or insurance recovery, as the case may be.

(c) *Lack of Good Faith*. To indemnify Indemnitee for any Expenses incurred by the Indemnitee with respect to any action instituted (i) by Indemnitee to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 that each of the material assertions made by the Indemnitee as a basis for such action was not made in good faith or was frivolous, or (ii) by or in the name of the Company to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous.

(d) *Claims Under Section 16(b)*. To indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute; *provided, however*, that notwithstanding any limitation set forth in this Section 10(d) regarding the Company's obligation to provide indemnification, Indemnitee shall be entitled under Section 3 to receive Expense Advances hereunder with respect to any such Claim unless and until a court having jurisdiction over the Claim shall have made a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee has violated said statute.

11. ***Counterparts.*** This Agreement may be executed in counterparts and by facsimile or electronic transmission, each of which shall constitute an original and all of which, together, shall constitute one instrument.

12. ***Binding Effect; Successors and Assigns.*** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer, employee, agent or fiduciary (as applicable) of the Company or of any other enterprise at the Company's request.

13. ***Expenses Incurred in Action Relating to Enforcement or Interpretation.*** In the event that any action is instituted by Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, Indemnitee shall be entitled to be indemnified for all Expenses incurred by Indemnitee with respect to such action (including without limitation attorneys' fees), regardless of whether Indemnitee is ultimately successful in such action, unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous; *provided*, *however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action. In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be indemnified for all Expenses incurred by Indemnitee in defense of such action (including without limitation costs and expenses incurred with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous; *provided*, *however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action.

14. ***Notices.*** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and signed for by the party addressed, on the date of such delivery, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement or as subsequently modified by written notice.

15. ***Consent to Jurisdiction.*** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the Court of Chancery of the State of Delaware in and for Kent County, which shall be the exclusive and only proper forum for adjudicating such a claim.

16. ***Severability.*** The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including without limitation each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

17. ***Choice of Law.*** This Agreement, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

18. ***Subrogation.*** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

19. ***Amendment and Termination.*** No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

20. ***Integration and Entire Agreement.*** This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto.

21. ***No Construction as Employment Agreement.*** Nothing contained in this Agreement shall be construed as giving Indemnitee any right to employment by the Company or any of its subsidiaries or affiliated entities.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement as of the date first above written.

ACCURAY INCORPORATED

By:

Name:

Title:

Address: Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Attn: Chief Financial Officer

AGREED TO AND ACCEPTED BY:

INDEMNITEE:

Name:

Address:

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.8

[**ACCURAY LETTERHEAD**]

November 10, 2006

Euan Thomson, Ph.D.

Re: EMPLOYMENT TERMS

Dear Euan:

Accuray Incorporated (the "**Company**") is pleased to offer to continue your employment as President and Chief Executive Officer of the Company on the terms and conditions set forth in this letter, effective as of November 10, 2006 (the "**Effective Date**"). This letter amends and restates in its entirety that certain employment letter, dated as of January 25, 2002, between you and the Company (the "**Original Employment Letter**").

1. **TERM.** The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

2. **POSITION, DUTIES AND RESPONSIBILITIES.** During the period of the employment relationship between you and the Company (the "**Term**"), the Company will employ you, and you agree to be employed by the Company, as Chief Executive Officer of the Company. In the capacity of Chief Executive Officer, you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Board of Directors of the Company (the "**Board**"), and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or such other location in the greater Sunnyvale area as the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION.** During the Term, the Company will pay you a base salary of $420,000 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **ANNUAL BONUS.** In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 60% of your base salary actually paid for such year.

5. **STOCK OPTION AWARDS.**

(a) Subject to approval by the Board or the Compensation Committee of the Board, the Company agrees to grant to you, not later than the first regularly scheduled Board meeting of each calendar year during the Term, a stock option to purchase 40,000 shares of the Company's common stock (each, a "**Stock Option**"). Each Stock Option shall be granted to you as an "incentive stock option" (within the meaning of Section 422 of the Code) at an exercise price per share equal to the fair market value of a share of the Company's common stock on the date of grant, as determined in accordance with the Company's incentive award plan under which such Stock Option is granted. Subject to your continued employment with the Company, each Stock Option shall vest and become exercisable over a four (4) year period, with 1/48th of the shares subject thereto vesting in equal monthly installments on each monthly anniversary of the date of grant. Consistent with the foregoing, the terms and conditions of each Stock Option shall be set

forth in a stock option agreement to be entered into by the Company and you which shall evidence the grant of each Stock Option (the "**Stock Option Agreement**").

(b) In the event of a Change in Control (as defined in Exhibit A hereto), each of your then outstanding stock options to purchase shares of the Company's common stock (including, without limitation, the Stock Options) will become fully vested and exercisable immediately prior to the effective time of the Change in Control.

6. **BENEFITS AND VACATION.** During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, sick leave, vacations and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 6 will be subject to change from time to time as deemed appropriate and necessary by the Company.

7. **TERMINATION OF EMPLOYMENT.**

(a) In the event of a termination of your employment by the Company without Cause or by you for Good Reason (each as defined below), then, in addition to any other accrued amounts payable to you through the date of termination of your employment (including any earned but unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to the sum of (x) twelve (12) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which such termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 100% of your target annual bonus for the fiscal year of the Company in which such termination occurs, (2) each of your then outstanding stock options to purchase shares of the Company's common stock will, immediately prior to the effective time of the termination of your employment, become vested and exercisable with respect to that number of additional shares that would have become vested during the twelve (12) month period immediately following the date of such termination had you remained employed by the Company through such period, and (3) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the twelve (12) month period immediately following the date of such termination of your employment. Such payments for the Severance Benefits will begin no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code (the "**Deferred COBRA Payment Date**"), and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date.

(b) If a Change in Control occurs during the Term and your employment with the Company is terminated (i) by the Company without Cause or by you for Good Reason, in each case within the twelve (12) month period immediately following the effective date of the Change in Control or (ii) by you for any reason on or within the 30 day period immediately following the effective date

of the Change in Control, then, in lieu of the Severance Payment and Severance Benefits described in paragraph (a) of this Section 7 and in addition to any other accrued amounts payable to you through the date of termination of your employment (including any earned but unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum Severance Payment in an amount equal to the sum of (x) eighteen (18) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which the termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 150% of your target annual bonus for the fiscal year of the Company in which such termination occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the Severance Benefits for the eighteen (18) month period immediately following such termination of your employment. Such payments for the Severance Benefits will begin on the Deferred COBRA Payment Date, and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 7 is conditioned on and subject to your execution and non-revocation of a general release of claims against the Company and its affiliates, in a form prescribed by the Company. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 7 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

(A) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other act or omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or (iii) your failure to perform the normal and customary duties of your position with the Company as reasonably directed by the Board, provided, that any of the acts or omissions described in the foregoing clauses (i), (ii) or (iii) are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

(B) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent, unless the Company fully corrects the circumstances constituting Good Reason within 30 days after notice from you that Good Reason exists: (i) a material reduction of your duties and responsibilities hereunder; (ii) a relocation of your principal workplace more than 35 miles outside the Company's Sunnyvale corporate headquarters; or (iii) the Company's reduction of your annual base salary or bonus opportunity, each as in effect on the date hereof or as the same may be increased from time to time; provided that written notice of your resignation for Good Reason must be delivered to the Company within 30 days after the date you first know or should reasonably know of the occurrence of any such event in order for your resignation with Good Reason to be effective hereunder.

8. **CODE SECTION 280G.**

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the

Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. For purposes of this Section 8(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 8 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

9. **RESTRICTIVE COVENANTS.**

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 9(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefor, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

10. **COMPANY RULES AND REGULATIONS.** As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook or as otherwise promulgated. In addition, as a condition of your employment, you acknowledge that you and the Company have entered into that certain Employee Confidentiality and Inventions Agreement dated as of March 11, 2002, and you hereby agree to abide by the terms of that certain Employee Confidentiality and Inventions Agreement dated as of March 11, 2002, by and between you and the Company.

11. **DIRECTORS' AND OFFICERS' INSURANCE.** During the Term, the Company shall provide you with coverage under the Company's directors' and officers' insurance policy, as in effect from time to time for senior executives of the Company.

12. **WITHHOLDING.** The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

13. **ARBITRATION.** Except as set forth in Section 9(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

14. **ENTIRE AGREEMENT.** As of the Effective Date, this letter, together with the Stock Option Agreement, constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group (including, without limitation, the Original Employment Letter).

15. **SEVERABILITY.** Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such

invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

16. **ACKNOWLEDGEMENT.** You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

17. **SECTION 409A OF THE CODE.** To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder in order to (a) preserve the intended tax treatment of the benefits provided with respect to such payments and (b) comply with the requirements of Section 409A of the Code.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to the Company. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED,
a California corporation

By: /s/ Wayne Wu

Name: Wayne Wu
Title: Chairman

Accepted and Agreed,
this 10th day of November, 2006.

By: /s/ Euan Thomson

EXHIBIT A

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

QuickLinks

EXHIBIT A

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.9

[**ACCURAY LETTERHEAD**]

November 10, 2006

Chris A. Raanes

Re: **EMPLOYMENT TERMS**

Dear Chris:

Accuray Incorporated (the "**Company**") is pleased to offer to continue your employment as Senior Vice President, Chief Operating Officer of the Company on the terms and conditions set forth in this letter, effective as of November 10, 2006 (the "**Effective Date**"). This letter amends and restates in its entirety that certain employment letter, dated as of July 24, 2002, between you and the Company (the "**Original Employment Letter**").

1. **TERM.** The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

2. **POSITION, DUTIES AND RESPONSIBILITIES.** During the period of the employment relationship between you and the Company (the "**Term**"), the Company will employ you, and you agree to be employed by the Company, as Senior Vice President, Chief Operating Officer of the Company. In the capacity of Senior Vice President, Chief Operating Officer, you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer of the Company (the "**CEO**"), and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or such other location in the greater Sunnyvale area as the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION.** During the Term, the Company will pay you a base salary of $290,000 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **ANNUAL BONUS.** In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 40% of your base salary actually paid for such year.

5. **BENEFITS AND VACATION.** During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, sick leave, vacations and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 5 will be subject to change from time to time as deemed appropriate and necessary by the Company.

6. **TERMINATION OF EMPLOYMENT.**

(a) In the event of a termination of your employment by the Company without Cause or by you for Good Reason (each as defined below), then, in addition to any other accrued amounts

payable to you through the date of termination of your employment (including any earned but unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to the sum of (x) eight (8) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which such termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 66—$^{2}/_{3}$% of your target annual bonus for the fiscal year of the Company in which such termination occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the eight (8) month period immediately following the date of such termination of your employment. Such payments for the Severance Benefits will begin no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code (the "**Deferred COBRA Payment Date**"), and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date.

(b) If a Change in Control (as defined in Exhibit A hereto) occurs during the Term and your employment with the Company is terminated by the Company without Cause or by you for Good Reason, in each case within the twelve (12) month period immediately following the effective date of the Change in Control, then, in addition to the amounts payable to you pursuant to paragraph (a) of this Section 6, each of your then outstanding stock options to purchase shares of the Company's common stock shall become fully vested and exercisable immediately prior to the effective time of the termination of your employment.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 6 is conditioned on and subject to your execution and non-revocation of a general release of claims against the Company and its affiliates, in a form prescribed by the Company. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 6 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

(A) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other act or omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or (iii) your failure to perform the normal and customary duties of your position with the Company as reasonably directed by the CEO, provided, that any of the acts or omissions described in the foregoing clauses (i), (ii) or (iii) are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

(B) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent, unless the Company fully corrects the circumstances constituting Good Reason within 30 days after notice from you that Good Reason exists: (i) a

material reduction of your duties and responsibilities hereunder; (ii) a relocation of your principal workplace more than 35 miles outside the Company's Sunnyvale corporate headquarters; or (iii) the Company's reduction of your annual base salary or bonus opportunity, each as in effect on the date hereof or as the same may be increased from time to time; provided that written notice of your resignation for Good Reason must be delivered to the Company within 30 days after the date you first know or should reasonably know of the occurrence of any such event in order for your resignation with Good Reason to be effective hereunder.

7. **CODE SECTION 280G.**

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. For purposes of this Section 7(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 7 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

8. **RESTRICTIVE COVENANTS.**

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that,

upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 8(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefor, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

9. **COMPANY RULES AND REGULATIONS.** As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook or as otherwise promulgated. In addition, as a condition of your employment, you acknowledge that you and the Company have entered into that certain Employee Confidentiality and Inventions Agreement dated as of September 1, 2002, and you hereby agree to abide by the terms of that certain Employee Confidentiality and Inventions Agreement dated as of September 1, 2002, by and between you and the Company.

10. **WITHHOLDING.** The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

11. **ARBITRATION.** Except as set forth in Section 8(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof.

Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

12. **ENTIRE AGREEMENT.** As of the Effective Date, this letter constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group (including, without limitation, the Original Employment Letter).

13. **SEVERABILITY.** Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

14. **ACKNOWLEDGEMENT.** You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

15. **SECTION 409A OF THE CODE.** To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder in order to (a) preserve the intended tax treatment of the benefits provided with respect to such payments and (b) comply with the requirements of Section 409A of the Code.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Euan Thomson, Ph.D., Chief Executive Officer of the Company. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED,
a California corporation

By: /s/ Euan Thomson

Name: Euan Thomson, Ph.D.
Title: Chief Executive Officer

Accepted and Agreed,
this 10th day of November, 2006.

By: /s/ Chris A. Raanes

EXHIBIT A

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board of Directors of the Company together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board of Directors of the Company or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

QuickLinks

EXHIBIT A

Exhibit 10.10

[**ACCURAY LETTERHEAD**]

November 10, 2006

Robert E. McNamara

Re: **EMPLOYMENT TERMS**

Dear Robert:

Accuray Incorporated (the "**Company**") is pleased to offer to continue your employment as Senior Vice President, Chief Financial Officer of the Company on the terms and conditions set forth in this letter, effective as of November 10, 2006 (the "**Effective Date**"). This letter amends and restates in its entirety that certain employment letter, dated as of December 7, 2004, between you and the Company (the "**Original Employment Letter**").

1. **TERM.** The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

2. **POSITION, DUTIES AND RESPONSIBILITIES.** During the period of the employment relationship between you and the Company (the "**Term**"), the Company will employ you, and you agree to be employed by the Company, as Senior Vice President, Chief Financial Officer of the Company. In the capacity of Senior Vice President, Chief Financial Officer, you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer of the Company (the "**CEO**"), and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or such other location in the greater Sunnyvale area as the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION.** During the Term, the Company will pay you a base salary of $275,000 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **ANNUAL BONUS.** In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 40% of your base salary actually paid for such year.

5. **BENEFITS AND VACATION.** During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, sick leave, vacations and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 5 will be subject to change from time to time as deemed appropriate and necessary by the Company.

6. **TERMINATION OF EMPLOYMENT; CHANGE IN CONTROL.**

(a) In the event of a termination of your employment by the Company without Cause or by you for Good Reason (each as defined below) or if a Change in Control (as defined in Exhibit A

hereto) occurs during the Term and your employment is terminated by you for any reason on or within the 30 day period immediately following the effective date of the Change in Control, then, in addition to any other accrued amounts payable to you through the date of termination of your employment (including any earned but unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to the sum of (x) twelve (12) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which such termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 100% of your target annual bonus for the fiscal year of the Company in which such termination occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the twelve (12) month period immediately following the date of such termination of your employment. Such payments for the Severance Benefits will begin no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code (the "**Deferred COBRA Payment Date**"), and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date. In addition, in the event of a termination of your employment by the Company without Cause or by you for Good Reason prior to a Change in Control, each of your then outstanding stock options to purchase shares of the Company's common stock will, immediately prior to the effective time of the termination of your employment, become vested and exercisable with respect to that number of additional shares that would have become vested during the twelve (12) month period immediately following the date of such termination had you remained employed by the Company through such period.

(b) In the event of a Change in Control, each of your then outstanding stock options to purchase shares of the Company's common stock will become fully vested and exercisable immediately prior to the effective time of the Change in Control.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 6 is conditioned on and subject to your execution and non-revocation of a general release of claims against the Company and its affiliates, in a form prescribed by the Company. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 6 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

(A) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other act or omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or (iii) your failure to perform the normal and customary duties of your position with the Company as reasonably directed by the CEO, provided, that any of the acts or omissions described in the foregoing clauses (i), (ii) or (iii) are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

(B) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent, unless the Company fully corrects the circumstances constituting Good Reason within 30 days after notice from you that Good Reason exists: (i) a material reduction of your duties and responsibilities hereunder; (ii) a relocation of your principal workplace more than 35 miles outside the Company's Sunnyvale corporate headquarters; or (iii) the Company's reduction of your annual base salary or bonus opportunity, each as in effect on the date hereof or as the same may be increased from time to time; provided that written notice of your resignation for Good Reason must be delivered to the Company within 30 days after the date you first know or should reasonably know of the occurrence of any such event in order for your resignation with Good Reason to be effective hereunder.

7. **CODE SECTION 280G.**

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. For purposes of this Section 7(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 7 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

8. **RESTRICTIVE COVENANTS.**

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or

other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 8(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefor, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

9. **COMPANY RULES AND REGULATIONS.** As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook or as otherwise promulgated. In addition, as a condition of your employment, you acknowledge that you and the Company have entered into that certain Employee Confidentiality and Inventions Agreement dated as of December 13, 2004, and you hereby agree to abide by the terms of that certain Employee Confidentiality and Inventions Agreement dated as of December 13, 2004, by and between you and the Company.

10. **WITHHOLDING.** The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

11. **ARBITRATION.** Except as set forth in Section 8(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules

of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

12. **ENTIRE AGREEMENT.** As of the Effective Date, this letter constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group (including, without limitation, the Original Employment Letter).

13. **SEVERABILITY.** Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

14. **ACKNOWLEDGEMENT.** You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

15. **SECTION 409A OF THE CODE.** To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder in order to (a) preserve the intended tax treatment of the benefits provided with respect to such payments and (b) comply with the requirements of Section 409A of the Code.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Euan Thomson, Ph.D., Chief Executive Officer of the Company. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED,
a California corporation

By: /s/ Euan Thomson

Name: Euan Thomson, Ph.D.
Title: Chief Executive Officer

Accepted and Agreed,
this 9th day of November, 2006.

By: /s/ Robert E. McNamara

EXHIBIT A

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board of Directors of the Company together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board of Directors of the Company or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

QuickLinks

EXHIBIT A

Exhibit 10.11

[Accuray, Incorporated Letterhead]

July 22, 2004

Dear Dr. Allison:

We are pleased to extend to you a position with Accuray Incorporated as Vice President of Engineering. Working in this capacity, you will report directly to me and have primary responsibility for Research, Development and Engineering at Accuray. This letter sets out the terms of your employment with the Company, which will start on August 9th, 2004.

You will receive a salary of $205,000 annually ("Base Salary"), paid in accordance with the Company's regular payroll practices and subject to applicable withholdings. In addition, you will be eligible for an annual bonus of up to 40% of your earned Base Salary under Accuray's executive bonus plan, subject to applicable withholdings, based upon certain performance goals set for you and based on company achievements. You will also receive an additional one-time bonus of $20,000 payable after 6 months of full employment by Accuray. In addition, you will be entitled to participate in all of the benefit programs that Accuray makes available to its employees.

As an added incentive, we will recommend to the Board of Directors and subject to their approval that you receive an Option to purchase 250,000 shares of Accuray common stock priced at the fair market value on the date of the grant ("Option") as determined by the Board. Your option will vest over a period of four years as follows: 25% on the anniversary of your Start Date, the remainder to vest in equal monthly parts (1/48th) thereafter. The Option will be subject to the terms and conditions of the Company's 1998 Stock Option Plan and Stock Option Agreement, which you will be required to sign as a condition precedent to receiving the Option.

We will recommend to the Board of Directors that you be an Officer of the company. This will be subject to Board approval.

In the event of change of control of the company, and, subsequently, you are terminated or constructively terminated (your job responsibilities or compensation substantially reduced, or you are required to relocate more than 40 miles from Accuray's current location), upon your termination, your options will vest immediately, and you will be entitled to 6 months of your Base Salary.

If you join Accuray, your employment with the Company will be "at-will" and for no specified term. "At will" means that you are free to resign your position with the Company at any time, with or without cause or advance notice, as you deem appropriate. Similarly the Company has the right to terminate your employment at any time, without cause or advance notice. As a condition of your employment, you will be required to sign the Company's Employee Confidentiality and Assignment of Inventions Agreement, and provide the company with documents establishing your identity and right to work in the United States. These documents must be provided to the Company within three days after your employment Start Date or you may be subject to termination in accordance with Federal Immigration laws.

In the event of any dispute or claim relating to or arising out of your employment relationship with the Company, or the termination or your employment with Company for any reason (including, but not limited to, any claims of breach of contract, wrongful termination, or age, sex, race, national origin, disability or other discrimination or harassment), you and the Company agree that all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in Santa Clara County, CA. You and the Company hereby waive your respective rights to have any such disputes or claims tried by a judge or jury. Notwithstanding the foregoing, however, this arbitration provision shall not apply to any claims for injunctive relief by you or the Company or any relief sought to enforce the provisions of the employee Confidentiality and Assignment of Inventions Agreement or relating to the or arising out of the misuse or appropriation of the trade secrets or proprietary information.

To indicate your acceptance of this offer, please sign and date this letter on the spaces below and return it to us no later than July 26, 2004. A duplicate original is enclosed for your records. This agreement, the Confidentiality and Assignment of Inventions Agreement, the Stock Option Plan and the Stock Option Agreement constitute the entire agreement between you and the Company regarding the terms and conditions of your employment, and they supersede all prior negotiations, representations or agreements between you and the Company. The Stock Option Plan and the Stock Option Agreement will be forwarded to you upon execution of this Employment Agreement and the Confidentiality and Assignment of Inventions Agreement. The provisions of this agreement regarding "at-will" employment and arbitration may only be modified by a written agreement signed by you and the Chief Executive Officer of the Company.

I am excited to have you as part of the Accuray team and look forward to your contributions to the success of Accuray.

Sincerely,

/s/ CHRIS A. RAANES

Chris A. Raanes
Chief Operating Officer

I accept the above terms of employment as stated, and I understand that my employment with the Company is at-will and for no specified term.

/s/ JOHN W. ALLISON	7/23/04
John W. Allison, Ph.D.	Date

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.12

[Accuray Letterhead]

November 10, 2006

Re: Employment Terms

Dear Eric:

Accuray Incorporated (the "**Company**") is pleased to offer to continue your employment as Senior Vice President, Chief Marketing Officer of the Company on the terms and conditions set forth in this letter, effective as of November 10, 2006 (the "**Effective Date**"). This letter amends and restates in its entirety that certain employment letter, dated as of October 11, 2004, between you and the Company (the "**Original Employment Letter**").

1. **Term**. The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

2. **Position, Duties and Responsibilities**. During the period of the employment relationship between you and the Company (the "**Term**"), the Company will employ you, and you agree to be employed by the Company, as Senior Vice President, Chief Marketing Officer of the Company. In the capacity of Senior Vice President, Chief Marketing Officer, you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer of the Company (the "**CEO**"), and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or such other location in the greater Sunnyvale area as the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **Base Compensation**. During the Term, the Company will pay you a base salary of $275,000 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **Annual Bonus**. In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 40% of your base salary actually paid for such year.

5. **Benefits and Vacation**. During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, sick leave, vacations and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 5 will be subject to change from time to time as deemed appropriate and necessary by the Company.

6. **Termination of Employment**.

(a) In the event of a termination of your employment by the Company without Cause or by you for Good Reason (each as defined below), then, in addition to any other accrued amounts payable to you through the date of termination of your employment (including any earned but

unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to the sum of (x) eight (8) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which such termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 66-?% of your target annual bonus for the fiscal year of the Company in which such termination occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the eight (8) month period immediately following the date of such termination of your employment. Such payments for the Severance Benefits will begin no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code (the "**Deferred COBRA Payment Date**"), and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date.

(b) If a Change in Control (as defined in *Exhibit A* hereto) occurs during the Term and your employment with the Company is terminated by the Company without Cause or by you for Good Reason, in each case within the twelve (12) month period immediately following the effective date of the Change in Control, then, in addition to the amounts payable to you pursuant to paragraph (a) of this Section 6, each of your then outstanding stock options to purchase shares of the Company's common stock shall become fully vested and exercisable immediately prior to the effective time of the termination of your employment.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 6 is conditioned on and subject to your execution and non-revocation of a general release of claims against the Company and its affiliates, in a form prescribed by the Company. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 6 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

(A) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other act or omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or (iii) your failure to perform the normal and customary duties of your position with the Company as reasonably directed by the CEO, provided, that any of the acts or omissions described in the foregoing clauses (i), (ii) or (iii) are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

(B) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent, unless the Company fully corrects the circumstances constituting Good Reason within 30 days after notice from you that Good Reason exists: (i) a material reduction of your duties and responsibilities hereunder; (ii) a relocation of your principal workplace more than 35 miles outside the Company's Sunnyvale corporate headquarters; or (iii) the Company's reduction of your annual base salary or bonus opportunity, each as in effect on the date hereof or as the same may be increased from time

to time; provided that written notice of your resignation for Good Reason must be delivered to the Company within 30 days after the date you first know or should reasonably know of the occurrence of any such event in order for your resignation with Good Reason to be effective hereunder.

7. **Code Section 280G**.

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. For purposes of this Section 7(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 7 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

8. **Restrictive Covenants**.

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for

any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 8(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefor, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

9. **Company Rules and Regulations**. As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook or as otherwise promulgated. In addition, as a condition of your employment, you acknowledge that you and the Company have entered into that certain Employee Confidentiality and Inventions Agreement dated as of October 12, 2004, and you hereby agree to abide by the terms of that certain Employee Confidentiality and Inventions Agreement dated as of October 12, 2004, by and between you and the Company.

10. **Withholding**. The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

11. **Arbitration**. Except as set forth in Section 8(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

12. **Indemnification**. The Company shall indemnify you and hold you harmless for any liabilities actually incurred by you to the extent that your employment by the Company, in and of itself, results in a violation of your BrainLAB Non-Competition Agreement (the "**Non-Competition Agreement**"), provided that any such violation is not a result of any willful breach of the Non-Competition Agreement by you or your negligence or misconduct. In addition, you hereby acknowledge that the Company has advised you to consult with separate legal counsel regarding the Non-Competition Agreement and the provisions of this Section 12. Should you choose to do so, the Company will reimburse you for all reasonable legal consultation fees that you actually incur and submit to the Company in connection therewith.

13. **Entire Agreement**. As of the Effective Date, this letter constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group (including, without limitation, the Original Employment Letter).

14. **Severability**. Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

15. **Acknowledgement**. You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

16. **Section 409A of the Code**. To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder in order to (a) preserve the intended tax treatment of the benefits provided with respect to such payments and (b) comply with the requirements of Section 409A of the Code.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Euan Thomson, Ph.D., Chief Executive Officer of the Company. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED
a California corporation

By: /s/ EUAN THOMSON

Name: Euan Thomson, Ph.D.
Title: Chief Executive Officer

Accepted and Agreed,
this 11th day of November, 2006.

By: /s/ ERIC LINDQUIST

EXHIBIT A

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board of Directors of the Company together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board of Directors of the Company or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

QuickLinks

[Accuray Letterhead]
EXHIBIT A

Exhibit 10.13

[*Accuray Letterhead*]

November 10, 2006

Re: Employment Terms

Dear Wade:

Accuray Incorporated (the "**Company**") is pleased to offer to continue your employment as Senior Vice President, Worldwide Sales of the Company on the terms and conditions set forth in this letter, effective as of November 10, 2006 (the "**Effective Date**"). This letter amends and restates in its entirety that certain employment letter, dated as of August 11, 2006, between you and the Company (the "**Original Employment Letter**").

1. **Term**. The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

2. **Position, Duties and Responsibilities**. During the period of the employment relationship between you and the Company (the "**Term**"), the Company will employ you, and you agree to be employed by the Company, as Senior Vice President, Worldwide Sales of the Company. In the capacity of Senior Vice President, Worldwide Sales, you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer of the Company (the "**CEO**"), and will work primarily from your home in Texas, however will also work as reasonably required from our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or such other location in the greater Sunnyvale area as the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **Base Compensation**. During the Term, the Company will pay you a base salary of $250,000 per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **Annual Bonus**. In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be 75% of your base salary actually paid for such year. *Exhibit A* attached hereto sets forth the terms of your first annual bonus.

5. **Stock Option Awards**. You and the Company hereby acknowledge that pursuant to the terms of the Original Employment Letter, as of October 24, 2006, the Company granted you a stock option to purchase 250,000 shares of the Company's common stock (the "**Initial Stock Option**") at an exercise price of $10.00 per share. The Initial Stock Option was granted to you under the Company's 1998 Equity Incentive Plan, and, subject to your continued employment with the Company, the Initial Stock Option shall vest and become exercisable over a four (4) year period, with twenty-five percent (25%) of the shares subject thereto vesting on September 5, 2007, and the remaining seventy-five percent (75%) vesting in equal monthly installments on the fifth day of each month thereafter. In addition, the Company will annually recommend to the Board of Directors of the Company (the "**Board**") that the Company grant you a stock option no later than the September 30 following each of the first three anniversaries of your commencement of employment with the Company to purchase 100,000 shares of the Company's common stock (each, a "**Subsequent Stock Option**," and together with the Initial Stock

Option, the "**Stock Options**"). The exercise price per share of each Subsequent Stock Option shall be equal to the fair market value of a share of the Company's common stock on the date of grant, as determined in accordance with the Company's incentive award plan under which such Subsequent Stock Option is granted. Subject to your continued employment with the Company, each Subsequent Stock Option shall vest and become exercisable over a four (4) year period, with $1/48^{th}$ of the shares subject thereto vesting in equal monthly installments on each monthly anniversary of the date of grant. Consistent with the foregoing, the terms and conditions of each Stock Option shall be set forth in a stock option agreement (each, a "**Stock Option Agreement**") to be entered into by the Company and you which shall evidence the grant of each such Stock Option.

6. **Benefits and Vacation**. During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, sick leave, vacations and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 6 will be subject to change from time to time as deemed appropriate and necessary by the Company.

7. **Termination of Employment**.

(a) In the event of a termination of your employment by the Company without Cause or by you for Good Reason (each as defined below), then, in addition to any other accrued amounts payable to you through the date of termination of your employment (including any earned but unpaid bonus), (1) the Company will no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any other taxes or penalties imposed under Section 409A of the Code, pay you a lump-sum severance payment (the "**Severance Payment**") in an amount equal to the sum of (x) six (6) months of your annual base salary as in effect on the date of termination plus (y) a pro rata portion of your target annual bonus for the fiscal year of the Company in which such termination occurs, calculated based on the number of days elapsed in such fiscal year through the date of termination plus (z) 50% of your target annual bonus for the fiscal year of the Company in which such termination occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the six (6) month period immediately following the date of such termination of your employment. Such payments for the Severance Benefits will begin no later than the date that is six (6) months and one (1) day after the date of your termination of employment, or the last day of such shorter period upon such termination of employment that is sufficient to avoid the imposition of additional tax under Section 409A(a)(1)(B) of the Code or any other taxes or penalties imposed under Section 409A of the Code (the "**Deferred COBRA Payment Date**"), and on the Deferred COBRA Payment Date, the Company will pay you an amount equal to the Severance Benefits for the period beginning on the date of your termination of employment and ending on the Deferred COBRA Payment Date.

(b) If a Change in Control (as defined in Exhibit B hereto) occurs during the Term and your employment with the Company is terminated by the Company without Cause or by you for Good Reason, in each case within the twelve (12) month period immediately following the effective date of the Change in Control, then, in addition to the amounts payable to you pursuant to paragraph (a) of this Section 7, each of your then outstanding stock options to purchase shares of the Company's common stock (including, without limitation, the Stock Options) shall become fully

vested and exercisable immediately prior to the effective time of the termination of your employment.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 7 is conditioned on and subject to your execution and non-revocation of a general release of claims against the Company and its affiliates, in a form prescribed by the Company. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 7 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

(A) "**Cause**" shall be deemed to exist upon a good faith finding by the Company of (i) your material failure to competently perform your assigned duties for the Company, (ii) your sustained poor performance of any material aspect of your duties or obligations hereunder, (iii) your dishonesty, gross negligence or other material misconduct, or (iv) your conviction of, or the entry of a plea of guilty or *nolo contendere* by you to, any crime involving moral turpitude or any felony; and

(B) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent, unless the Company fully corrects the circumstances constituting Good Reason within 30 days after notice from you that Good Reason exists: (i) a material reduction of your duties and responsibilities hereunder; (ii) a relocation of your principal workplace more than 35 miles outside the Company's Sunnyvale corporate headquarters; or (iii) a 10% or greater reduction of your annual base salary, as in effect on the date hereof or as may be increased from time to time; provided that written notice of your resignation for Good Reason must be delivered to the Company within 30 days after the date you first know or should reasonably know of the occurrence of any such event in order for your resignation with Good Reason to be effective hereunder.

8. **Code Section 280G**.

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a "**Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the "**Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. For purposes of this Section 8(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 8 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"),

provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

9. **Restrictive Covenants**.

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 9(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefor, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

10. **Company Rules and Regulations**. As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook or as otherwise promulgated. In addition, as a condition of your employment, you acknowledge that you and the Company have entered into that certain Employee Confidentiality and Inventions Agreement dated as of September 5, 2006, and you hereby agree to abide by the terms of that certain

Employee Confidentiality and Inventions Agreement dated as of September 5, 2006, by and between you and the Company.

11. **Withholding**. The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

12. **Arbitration**. Except as set forth in Section 9(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

13. **Entire Agreement**. As of the Effective Date, this letter, together with any Stock Option Agreement, constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group (including, without limitation, the Original Employment Letter).

14. **Severability**. Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

15. **Acknowledgement**. You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

16. **Section 409A of the Code**. To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder in order to (a) preserve the intended tax treatment of the benefits provided with respect to such payments and (b) comply with the requirements of Section 409A of the Code.

[*SIGNATURE PAGE FOLLOWS*]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to Euan Thomson, Ph.D., Chief Executive Officer of the Company. Please retain one fully-executed original for your files.

Sincerely,

ACCURAY INCORPORATED
a California corporation

By: /s/ EUAN THOMSON, PH.D.

Name: Euan Thomson, Ph.D.
Title: Chief Executive Officer

Accepted and Agreed,
this 10th day of November, 2006.

By: /s/ WADE HAMPTON

Wade Hampton

EXHIBIT A

[Sales Commission Information Omitted]

EXHIBIT B

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

QuickLinks

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is made effective as of April 1, 2006 by and between Accuray Inc., a California corporation (the "Company"), and John Adler, M.D. ("Contractor" and, together with the Company, the "Parties"). The Company desires to retain Contractor as an independent contractor to perform certain services for the Company and Contractor is willing to perform such services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. *Services.*

During the term of this agreement, Contractor will provide services (the "*Services*") to the Company as described on *Exhibit A* attached to this Agreement. Contractor shall use his best efforts to perform the Services to the satisfaction of the Company and by the completion dates specified by the Company. Contractor shall not perform any Services for the Company other than as specifically authorized in *Exhibit A.*

2. *Independent Contractor Status.*

It is the Parties' intent that Contractor at all times, and with respect to all Services covered by this Agreement function as and remain an independent contractor, and not an employee or officer of the Company, and neither Party shall represent to third parties that Contractor is an employee or officer of the Company.

(a) Contractor shall be responsible for the payment of all taxes on amounts received from the Company for the Services. The Company will regularly report amounts paid to Contractor by filing Form 1099-MISC with the Internal Revenue service, as required by law. No part of Contractor's fees will be subject to withholding by the Company for payment of any social security, federal, state or other employee payroll taxes. Contractor agrees to indemnify and hold the Company harmless from any liability for, or assessment of, any such taxes imposed on the Company by relevant taxing authorities.

(b) Contractor shall retain the right to perform services for others during the term of this Agreement.

(c) Contractor will determine the method, details, and means of performing the Services. The Company shall have no right to, and shall not control, the manner or determine the method of accomplishment of the Services, though it may define the Services to be performed. Such Services may be amended, from time-to-time, by the Parties by written agreement, signed by the Contractor and the Company.

(d) Contractor may, at Contractor's own expense, employ such assistants as the Contractor may deem necessary to perform the Services. The Company shall not control, direct or supervise the work of Contractor's assistants or employees in the performance of Services. The Contractor assumes full and sole responsibility for the quality of Services provided by the Contractor's assistants or employees, for the payment of all compensation and expenses of these assistants and employees, for state and federal income taxes and other applicable payroll taxes and withholding that may be required with respect to such assistants or employees, and for the provision of all benefits and insurance, including without limitation, Worker's Compensation Insurance, to such assistants or employees. Contractor shall furnish the Company with proof of Worker's Compensation Insurance coverage for all persons who provide Services pursuant to this Agreement.

(e) Contractor shall be responsible for all expenses incurred in the execution of Contractor's responsibilities pursuant to this Agreement, including, without limitation, all travel (including airfare and lodging), entertainment and dining expenses. No fines, taxes, bonds or fees imposed against Contractor, or costs of Contractor doing business, shall be reimbursable by the Company.

(f) Contractor shall not be eligible to participate in any fringe benefit program or any benefit plan of the Company.

(g) Contractor will have no authority to enter into contracts that bind the Company or to create obligations on the part of the Company without the prior written authorization of the Company.

(h) Contractor shall receive no office or administrative support from Company.

3. ***Fees.***

As consideration for the Services to be provided by Contractor, the Company will compensate Contractor as described in *Exhibit B* to this Agreement. Company will pay Contractor Contractor's annual compensation in quarterly installments of $34,250, such quarterly installments to be paid in advance of each quarter beginning on the date on which this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Compensation for Contractor's Services shall be conditioned on the actual performance by Contractor of Services and the Company's receipt and approval of accurate and detailed quarterly invoices, including records of time spent and Services performed, from Contractor in the form attached hereto as Exhibit D. Contractor shall submit such quarterly invoices for all Services performed by Contractor during the applicable quarter two (2) weeks prior to the end of such quarter (for example, for the first quarterly period of this Agreement, January 1, 2006 to March 31, 2006, Contractor's first quarterly invoice will be due to Company no later than March 17, 2006). If for any quarter, Contractor has not provided the level of Services required to earn the full quarterly installment for such quarter, then the quarterly installment for Contractor for the following quarter will be reduced in an amount equal to the amount that Contractor was overcompensated for the preceding quarter. If at the end of the term of this Agreement, Contractor has never performed certain services, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor will reimburse Company the corresponding amount for the services not performed within thirty (30) calendar days. The Parties acknowledge that payment for the Services provided hereunder is consistent with the fair market value of such Services and is not conditioned in any way on the volume or value of any business (i) between the Company and any other party, or (ii) resulting, directly or indirectly, from any of Contractor's activities hereunder.

4. ***Confidentiality.***

(a) ***Confidential Information.*** "Confidential Information" means Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, product specifications, services, customers, customer lists, pipeline documents, marketing plans and strategies, software, developments, inventions, processes, formulas, technology, designs, drawings,

engineering, hardware configuration information, circuit board designs, logic designs for filters and/or circuit boards, Company financials or other business information disclosed by the Company either directly or indirectly in writing, orally, or by drawings or inspection of parts or equipment. Confidential Information also includes any other information designated by the Company as such upon its disclosure to the Contractor.

(b) ***Disclosure*** Contractor will not, during or subsequent to the term of this Agreement, use the Company's Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of the Company. Contractor will not disclose the Company's Confidential Information to any third party, and understands that said Confidential Information shall remain the sole property of the Company. Contractor further agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information including, but not limited to, having each employee of Contractor, if any, with access to any Confidential Information, execute a nondisclosure agreement containing provisions in the Company's favor substantially similar to Sections 4, 5 and 6 of this Agreement. Confidential Information does not include information which, upon disclosure to Contractor is part of the public domain; can be established by written evidence to have been in the possession of Contractor at the time of disclosure; is received by Contractor from a third party without restriction and without breach of this Agreement; or has become publicly known and made generally available through no wrongful act of Contractor. If Contractor is required to disclose Confidential Information by lawfully issued subpoena or by an authorized order of a government agency, Contractor will immediately so inform the Company, and will use best efforts to minimize the disclosure of such Confidential Information and will consult with and assist the Company in seeking a protective order prior to such disclosure.

(c) ***Indemnity.*** Contractor agrees that Contractor will not, during the term of this Agreement, improperly use or disclose to the Company or any of its employees any proprietary information or trade secrets of any former or current employer or other person or entity with which Contractor has an agreement, or to which Contractor has a duty, to keep in confidence information acquired by Contractor, and that Contractor will not bring onto the premises of the Company any unpublished document, proprietary information, or trade secret belonging to such employer, person or entity unless consented to in writing by such employer, person or entity. Contractor will indemnify the Company and hold it harmless from and against all claims, liabilities, damages and expenses, including reasonable attorneys' fees and costs of suit, arising out of or in connection with any violation or claimed violation of a third party's rights resulting in whole or in part from the Services provided by Contractor under this Agreement.

(d) ***Third Parties.*** Contractor recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information or trade secrets subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Contractor agrees that Contractor owes the Company and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information or trade secrets in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for the Company consistent with the Company's agreement with such third party.

(e) ***Return of Confidential Information.*** Upon the termination of this Agreement, or upon the Company's earlier request, Contractor will deliver to the Company all of the Company's property and all Confidential Information in tangible form that Contractor may have in Contractor's possession or control.

5. ***Ownership.***

(a) ***Inventions.*** Contractor agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets (collectively,

"Inventions") conceived, made or discovered by Contractor, solely or in collaboration with others, during the period of this Agreement which relate in any manner to the business of the Company that Contractor may be directed to undertake, investigate or experiment with, or which Contractor may become associated with as a result of work, investigation or experimentation in the line of business of Company in performing the Services hereunder, are the sole property of the Company. Contractor further agrees to assign (or cause to be assigned) and does hereby assign fully to the Company all such Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto.

(b) ***Assistance.*** Contractor agrees to assist Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. Contractor further agrees that Contractor's obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

(c) ***License.*** Contractor agrees that if in the course of performing the Services, Contractor incorporates into any Invention developed hereunder any invention, improvement, development, concept, discovery or other proprietary information owned by Contractor or in which Contractor has an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such Invention.

(d) ***Agent.*** Contractor agrees that if the Company is unable because of Contractor's unavailability for any reason to secure Contractor's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company above, then Contractor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Contractor.

6. ***Originality and Noninfringement.***

Contractor represents and warrants that all materials and Services provided hereunder will be original with Contractor and that the use thereof by the Company or its customers, representatives, distributors or dealers will not infringe any patent, copyright, trade secret or other intellectual property right of any third party. Contractor agrees to indemnify and hold the Company harmless against any liability, loss, cost, damage, claims, demands or expenses (including reasonable attorneys' fees) of the Company or its customers, representatives, distributors or dealers arising out of any infringement or claim of infringement with respect to any materials or Services provided by Contractor.

7. ***Reports.***

Contractor agrees that Contractor will, from time-to-time during the term of this Agreement, keep the Company informed as to Contractor's progress in performing the Services hereunder and that Contractor will, as requested by the Company, prepare written reports with respect thereto. The Parties understand that the time required in the preparation of such written reports shall be considered time devoted to the performance of Contractor's Services.

8. ***Conflicting Obligations.***

(a) ***Performance.*** Contractor acknowledges that Contractor will be available to perform the Services in a timely and responsible manner, except for the occasional circumstance in which a pre-existing clinical responsibility on the part of Contractor may conflict with a new commitment requested by the Company, subject to the requirements of the schedule of Services arranged by Company and Contractor pursuant to Section 1 of Exhibit A hereto. Failure to perform in a timely and responsible manner shall be a breach of this Agreement.

(b) ***No Conflicts.*** Contractor represents and warrants that Contractor has no outstanding agreement or obligation that is in conflict with any provision of this Agreement, or that would preclude Contractor from complying with the provisions hereof, except as disclosed in *Exhibit C* hereto. Contractor further represents and warrants that Contractor will not enter into any such conflicting Agreement during the term of this Agreement.

9. ***Term and Termination.***

(a) ***Commencement.*** This Agreement will commence on the date first above written and will continue for a period of one year (the "Initial Term"). Unless 30 days' written notice of termination is given by either Party prior to the expiration of the Initial Term, or any subsequent Term, this Agreement shall renew for successive one-year periods.

(b) ***Termination.*** This Agreement may be terminated as follows:

(i) Either Party may terminate this Agreement with 30 days' prior written notice to the other. Any such notice shall be addressed to such Party at the address shown below or such other address as such Party shall provide to the other, and shall be deemed given upon delivery if personally delivered, on the next business day if sent via overnight courier, or three days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

(ii) The Parties shall attempt to amend this Agreement upon receipt of any Governmental Action in order to comply with such Governmental Action. If the Parties, acting in good faith, are unable to make the amendments necessary to comply with such Governmental Action, or, alternatively, if either Party determines in good faith that compliance with the Governmental Action is impossible or infeasible, this Agreement shall terminate 10 days after one Party notifies the other of such fact. For purposes of this Section 9(b)(ii), the term "Governmental Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to the Company, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would: (A) constitute a violation of any federal, state or local law; or (B) subject either Party, or any of their respective employees or agents, to civil or criminal liability or prosecution on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

(iii) If this Agreement is terminated for any reason within one-year of the date first above written, the Parties shall not enter into the same or substantially the same arrangement contemplated by this Agreement during the period which is one-year following the date first above written.

(c) ***Survival.*** Upon such termination, all rights and duties of the Parties toward each other shall cease except:

(i) that the Company shall be obliged to pay, within 30 days of receipt of the Contractor's invoice, all amounts owing to Contractor for unpaid Services through the termination date; and

(ii) Sections 4, 5, 6, 9 and 11 shall survive termination of this Agreement.

10. ***Assignment.***

Neither this Agreement nor any right hereunder or interest herein may be assigned or transferred by the Company or the Contractor without the written consent of the other.

11. ***Arbitration and Equitable Relief.***

(a) ***Arbitration.*** Except as provided in Section 11(b) below, the Company and Contractor agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement shall be settled by arbitration to be held in Santa Clara County, California before a single, neutral arbitrator associated with the Judicial Arbitration and Mediation Service ("JAMS"). The arbitrator shall be selected by the Parties or, if the Parties are unable to agree, by JAMS, in accordance with its selection practices. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. Unless otherwise required to preserve the enforceability of this arbitration clause, the Company and Contractor shall each pay one-half of the costs and expenses of such arbitration.

(b) ***Equitable Relief.*** Contractor agrees that it would be impossible or inadequate to measure and calculate the Company's damages from any breach of the covenants set forth in Section 4 or 5 herein. Accordingly, Contractor agrees that if Contractor breaches Sections 4 or 5, the Company will have available, in addition to any other right or remedy available, the right to obtain from any court of competent jurisdiction an injunction restraining such breach or threatened breach and specific performance of any such provision. Contractor further agrees that no bond or other security shall be required in obtaining such equitable relief and Contractor hereby consents to the issuances of such injunction and to the ordering of such specific performance.

12. ***Miscellaneous.***

(a) ***Amendments and Waivers.*** Any term of this Agreement may be amended or waived only with the written consent of the Parties.

(b) ***Entire Agreement.*** This Agreement, including the Exhibits hereto, constitutes the entire agreement of the Parties and supersedes and replaces all oral negotiations and prior writings with respect to the subject matter hereof.

(c) ***Notices.*** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier or overnight delivery service, or three days after being deposited in the regular United States mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(d) ***Governing Law.*** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to its principles of conflict of laws.

(e) ***Legal Fees.*** If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding, pursuant to Section 11, to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

(f) ***Severability.*** If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such unenforceable provision shall be deemed modified so as to be enforceable (or if not subject to modification then eliminated herefrom) for the purpose of those procedures to the extent necessary to permit the remaining provisions to be enforced.

(g) ***Counterparts.*** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(h) ***Advice of Counsel.*** EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

(i) ***Compliance with Laws*** The Parties agree to abide by the Company's compliance policies and all federal, state or local laws, regulations, ordinances or other legal requirements in connection with the performance of the Services hereunder. In addition, at all times during this Agreement, Contractor shall have in effect all licenses, permits and authorizations for all local, state, federal and foreign governmental agencies to the extent the same are necessary to the performance of the Services hereunder and will verify all such licenses, permits and authorizations are in place before performing any Services under this Agreement. Consultant shall not perform any Services under this Agreement for which he does not hold all necessary licenses, permits and authorizations and will hold the Company harmless in all respects for any claims or actions resulting from Contractor's violation of this provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

JOHN ADLER, M.D.		**ACCURAY, INC.**	
Signature:	/s/ JOHN ADLER	Signature:	/s/ ERIC LINDQUIST
Name:	John Adler, M.D.	Name:	Eric Lindquist
Title:	Contractor	Title:	SVP, Chief Marketing Officer
Address:		Address:	1310 Chesapeake Terrace
			Sunnyvale, CA 94089
Telephone:		Telephone:	408-716-4706
Date:	3/29/06	Date:	4/5/06
		Signature:	/s/ DARREN MILLIKEN
		Name:	Darren Milliken
		Title:	General Counsel
		Address:	1310 Chesapeake Terrace
			Sunnyvale, CA 94089
		Telephone:	408-716-4600
		Date:	4/4/06

EXHIBIT A

SERVICES

1. **Description of Services**. Contractor will be present at and participate in VIP visits arranged by Company at Stanford University Medical Center ("SUMC"). In addition, Contractor will travel to and participate in both domestic and international sales visits as requested by Company. Finally, Contractor will travel to and participate in certain domestic tradeshows which Company requests that Contractor attend. As soon as practicable following the execution of this Agreement, Contractor and the Company shall meet to schedule the specific Services to be performed during the first calendar quarter that this Agreement is in effect. Thereafter, Contractor and the Company shall meet at least thirty (30) days in advance of the end of each calendar quarter to schedule the Services to be performed during the subsequent calendar quarter.

2. **VIP Visits.** Contractor's duties and deliverables in connection with Contractor's participation in Company's VIP visits to SUMC (up to two (2) visits per month with a maximum of 13 visits per year) will include:

2.1. **Case Observation:** Contractor will participate in the observation of a case being treated in the CyberKnife Suite at SUMC.

2.2. **Question and Answer Sessions:** Contractor will participate in a thirty (30) minute question "Question and Answer" session following the observation in the CyberKnife suite for each VIP visit.

2.3. **Lunches/Dinners:** Contractor will attend a lunch or dinner meeting, as applicable, following the VIP visit.

3. **Sales Visits/Tradeshows.** Contractor's duties and deliverables in connection with Contractor's travel to and participation in sales visits and tradeshows will include:

3.1. **Domestic Sales Visits/Tradeshows:** Contractor will travel to and attend domestic sales visits and/or tradeshows as requested by Company, up to four (4) trips per year, with each trip to last for one (1) day.

3.2. **Europe and Emerging Market Sales Visits:** Contractor will travel to and attend sales visits in Europe and other international emerging markets (for example, China, India, or other miscellaneous emerging markets) as requested by Company. At Company's option, these sales visits shall consist of:

3.2.1. *Option 1*: Six (6) trips per year with four (4) trips lasting for four (4) days apiece (two full days with customer, the remaining days as travel), one (1) trip lasting for five (5) days (three full days with customer, the remaining days as travel), and one (1) trip lasting for three (3) days (one full day with customer, the remaining days as travel);

3.2.2. *Option 2*: Six (6) trips per year with each trip lasting for four (4) days (two full days with customer, the remaining days as travel); or

3.2.3. *Option 3*: Seven (7) trips per year with six (6) trips lasting for three (3) days (one full day with customer, the remaining days as travel) and one (1) trip lasting for four (4) days (two full days with customer, the remaining days as travel).

3.3. To the extent possible, Company shall use commercially reasonable efforts to provide Contractor with at least three (3) weeks prior notice of any travel required in connection with sales visits and attendance at trade shows.

EXHIBIT B

COMPENSATION

1. **Compensation.** Contractor shall be compensated for Services performed according to this Agreement as follows:

1.1. *Compensation for VIP Visits:*

- Case Observation: $500 per observation
- Q & A Session: $500 per Q&A session
- Lunch or Dinner: $500 per Lunch or Dinner
- Maximum Compensation per VIP Visit: $1,500
- Maximum Annual Compensation for VIP Visits:* $19,500 per year

*(maximum annual compensation for VIP Visits is based on thirteen (13) VIP visits per year with participation in case observation, Q&A Session and Lunch or Dinner at each VIP Visit)

1.2. *Compensation for Attending Domestic Sales/Tradeshow Visits:*

- Domestic Sales Visit/ Tradeshow: $4,250 per visit
- Maximum Annual Compensation for Domestic Sales Visits/ Tradeshows:* $17,000 per year

*(maximum annual compensation for Domestic Sales Visits/Tradeshows is based on the maximum of four (4) trips per year, such trips to be selected by Company)

1.3. *Compensation for Attending Europe and Emerging Market Sales Visits:*

- Europe and Emerging Market Sales Visit:

Option 1	Option 2	Option 3
$13,500 per three (3) day visit	$16,750 per four (4) day visit	$13,958.33 per three (3) day visit
$16,750 per four (4) day visit		$16,750 per four (4) day visit
$20,000 per five (5) day visit		

- Maximum Annual Compensation for Europe and Emerging Market Sales Visits:* $100,500 per year

*(maximum annual compensation for European and Emerging Market Sales Visits is based on the number of trips set forth under Option 1, Option 2 or Option 3 in Section 3.2 of Exhibit A above, as applicable)

1.4. *Total Compensation/Payment*. As indicated above, Contractor's maximum possible annual compensation from Company under this Agreement is $137,000 to be paid quarterly in

advance, in four (4) equal installments of $34,250 per quarter beginning on the day that this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Should Contractor not perform certain of the above objectives, then future quarterly payments to Contractor may be offset by the corresponding amount of the Services not performed. If at the end of the term of this Agreement, certain Services were not performed, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor shall reimburse Company for the corresponding amount of the services not performed within thirty (30) calendar days.

EXHIBIT C

LIST OF POTENTIAL CONFLICTS

—none—
/s/DM

EXHIBIT D

CONTRACTOR TIME RECORD

Contractor: _____

Date	Description of Services Performed	Locations of Services Performed	Number of Days/Visits

This record is a complete and accurate description of the Services I performed and the time spent in connection therewith on behalf of Accuray, Inc. on the dates specified above.

_____ _____

Contractor **Date**

AMENDMENT ONE TO EXHIBIT B (COMPENSATION)

This Amendment One ("Amendment") to Exhibit B (Compensation) is issued under and subject to all of the terms and conditions of the Independent Contractor Agreement (the "Agreement") dated as of April 1, 2006 by and between Accuray, Inc. ("***Company***") and John Adler, M.D. ("***Contractor***").

1. **Compensation.** In addition to the Compensation set forth on Exhibit B to the Agreement (for Services performed by Contractor pursuant to the Agreement), Contractor shall be compensated for Services performed according to this Amendment as follows:

1.1. *Compensation for Costs re: Registering for Conferences/Submitting Abstracts:*

Company shall reimburse Contractor for the following expenses incurred by Contractor: (i) registration fees for attending domestic tradeshows and/or conferences which Company requests that Contractor attend and (ii) fees for submitting abstracts prepared by Contractor, at Company's request, for presentations or papers at domestic tradeshows and/or conferences which Company requests that Contractor attend. All such expenses in excess of $250.00 require prior written approval by an authorized Company representative, which shall include Company's CMO or the Vice President of Channel Development. Contractor shall submit a written request to Company for reimbursement of all such expenses and reimbursement shall be conditioned on the Company's receipt of detailed receipts or similar documentation evidencing Contractor's payment of such fees. Subject to the foregoing, Company will pay each invoice submitted by Consultant pursuant to this Section within thirty (30) days following receipt thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment One to Exhibit B (Compensation) as of the day and year written below.

JOHN ADLER, M.D.

Signature: /s/ JOHN ADLER

Name: John Adler, M.D.

Title: Contractor

Address:

Telephone:

Date: 5/24/06

ACCURAY, INC.

Signature: /s/ ERIC LINDQUIST

Name: Eric Lindquist

Title: SVP, Chief Marketing Officer

Address: 1310 Chesapeake Terrace
Sunnyvale, CA 94089

Telephone: 408-716-4706

Date: 5/30/06

Signature: /s/ DARREN MILLIKEN

Name: Darren Milliken

Title: General Counsel

Address: 1310 Chesapeake Terrace
Sunnyvale, CA 94089

Telephone:

Date: 5/26/06

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.15

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is made effective as of April 1, 2006 by and between the CyberKnife Society, a California non-profit organization (the "Society"), and John Adler, M.D. ("Contractor" and, together with the Society, the "Parties"). The Society desires to retain Contractor as an independent contractor to perform certain services for the Society and Contractor is willing to perform such services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. ***Services.***

During the term of this agreement, Contractor will serve as President and, when applicable, President Emeritus of the Board of the Society, and will provide services (the "*Services*") to the Society as described on *Exhibit A* attached to this Agreement. Contractor shall use his best efforts to perform the Services to the satisfaction of the Society and by the completion dates specified by the Society. Contractor shall not perform any Services for the Society other than as specifically authorized in *Exhibit A*.

2. ***Independent Contractor Status.***

It is the Parties' intent that Contractor at all times, and with respect to all Services covered by this Agreement function as and remain an independent contractor, and not an employee of the Society, and neither Party shall represent to third parties that Contractor is an employee of the Society.

(a) Contractor shall be responsible for the payment of all taxes on amounts received from the Society for the Services. The Society will regularly report amounts paid to Contractor by filing Form 1099-MISC with the Internal Revenue service, as required by law. No part of Contractor's fees will be subject to withholding by the Society for payment of any social security, federal, state or other employee payroll taxes. Contractor agrees to indemnify and hold the Society harmless from any liability for, or assessment of, any such taxes imposed on the Society by relevant taxing authorities.

(b) Contractor shall retain the right to perform services for others during the term of this Agreement.

(c) Contractor will determine the method, details, and means of performing the Services. The Society shall have no right to, and shall not control, the manner or determine the method of accomplishment of the Services, though it may define the Services to be performed. Such Services may be amended, from time-to-time, by the Parties by written agreement, signed by the Contractor and the Society.

(d) Contractor may, at Contractor's own expense, employ such assistants as the Contractor may deem necessary to perform the Services. The Society shall not control, direct or supervise the work of Contractor's assistants or employees in the performance of Services. The Contractor assumes full and sole responsibility for the quality of Services provided by the Contractor's

assistants or employees, for the payment of all compensation and expenses of these assistants and employees, for state and federal income taxes and other applicable payroll taxes and withholding that may be required with respect to such assistants or employees, and for the provision of all benefits and insurance, including without limitation, Worker's Compensation Insurance, to such assistants or employees. Contractor shall furnish the Society with proof of Worker's Compensation Insurance coverage for all persons who provide Services pursuant to this Agreement.

(e) Contractor shall be responsible for all expenses incurred in the execution of Contractor's responsibilities pursuant to this Agreement, including, without limitation, all travel (including airfare and lodging), entertainment and dining expenses. No fines, taxes, bonds or fees imposed against Contractor, or costs of Contractor doing business, shall be reimbursable by the Society.

(f) Contractor shall not be eligible to participate in any fringe benefit program or any benefit plan of the Society.

(g) Contractor shall have reasonable assistance from Society with respect to administrative support staff as needed in furtherance of his duties as President.

(h) Contractor shall have the use of an office and a conference room from Society as needed in furtherance of his duties as President.

3. ***Fees*****.**

As consideration for the Services to be provided by Contractor, the Society will compensate Contractor as described in *Exhibit B* to this Agreement. Society will pay Contractor Contractor's annual compensation in quarterly installments of $19,000, such quarterly installments to be paid in advance of each quarter beginning on the date on which this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Contractor shall submit quarterly invoices for all Services performed by Contractor during the applicable quarter two (2) weeks prior to the end of such quarter (for example, for the first quarterly period of this Agreement, January 1, 2006 to March 31, 2006, Contractor's first quarterly invoice will be due to Society no later than March 17, 2006). If for any quarter, Contractor has not provided the level of Services required to earn the full quarterly installment for such quarter, then the quarterly installment for Contractor for the following quarter will be reduced in an amount equal to the amount that Contractor was overcompensated for the preceding quarter. If at the end of the term of this Agreement, Contractor has never performed certain services, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor will reimburse Society the corresponding amount for the services not performed within thirty (30) calendar days. The Parties acknowledge that payment for the Services provided hereunder is consistent with the fair market value of such Services.

4. ***Confidentiality*****.**

(a) ***Confidential Information***. "Confidential Information" means Society proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, product specifications, services, customers, customer lists, pipeline documents, marketing plans and strategies, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, circuit board designs, logic designs for filters and/or circuit boards, Society financials or other business information disclosed by the Society either directly or indirectly in writing, orally, or by drawings or inspection of parts or equipment. Confidential Information also includes any other information designated by the Society as such upon its disclosure to the Contractor.

(b) ***Disclosure***. Contractor will not, during or subsequent to the term of this Agreement, use the Society's Confidential Information for any purpose whatsoever other than the performance of

the Services on behalf of the Society. Contractor will not disclose the Society's Confidential Information to any third party, and understands that said Confidential Information shall remain the sole property of the Society. Contractor further agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information including, but not limited to, having each employee of Contractor, if any, with access to any Confidential Information, execute a nondisclosure agreement containing provisions in the Society's favor substantially similar to Sections 4, 5 and 6 of this Agreement. Confidential Information does not include information which, upon disclosure to Contractor is part of the public domain; can be established by written evidence to have been in the possession of Contractor at the time of disclosure; is received by Contractor from a third party without restriction and without breach of this Agreement; or has become publicly known and made generally available through no wrongful act of Contractor. If Contractor is required to disclose Confidential Information by lawfully issued subpoena or by an authorized order of a government agency, Contractor will immediately so inform the Society, and will use best efforts to minimize the disclosure of such Confidential Information and will consult with and assist the Society in seeking a protective order prior to such disclosure.

(c) ***Indemnity***. Contractor agrees that Contractor will not, during the term of this Agreement, improperly use or disclose to the Society or any of its employees any proprietary information or trade secrets of any former or current employer or other person or entity with which Contractor has an agreement, or to which Contractor has a duty, to keep in confidence information acquired by Contractor, and that Contractor will not bring onto the premises of the Society any unpublished document, proprietary information, or trade secret belonging to such employer, person or entity unless consented to in writing by such employer, person or entity. Contractor will indemnify the Society and hold it harmless from and against all claims, liabilities, damages and expenses, including reasonable attorneys' fees and costs of suit, arising out of or in connection with any violation or claimed violation of a third party's rights resulting in whole or in part from the Services provided by Contractor under this Agreement.

(d) ***Third Parties***. Contractor recognizes that the Society has received and in the future will receive from third parties their confidential or proprietary information or trade secrets subject to a duty on the Society's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Contractor agrees that Contractor owes the Society and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information or trade secrets in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for the Society consistent with the Society's agreement with such third party.

(e) ***Return of Confidential Information***. Upon the termination of this Agreement, or upon the Society's earlier request, Contractor will deliver to the Society all of the Society's property and all Confidential Information in tangible form that Contractor may have in Contractor's possession or control.

5. ***Ownership.***

(a) ***Inventions***. Contractor agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets (collectively, "Inventions") conceived, made or discovered by Contractor, solely or in collaboration with others, during the period of this Agreement which relate in any manner to the business of the Society that Contractor may be directed to undertake, investigate or experiment with, or which Contractor may become associated with as a result of work, investigation or experimentation in the line of business of Society in performing the Services hereunder, are the sole property of the Society. Contractor further agrees to assign (or cause to be assigned) and does hereby assign fully to the Society all

such Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto.

(b) ***Assistance***. Contractor agrees to assist Society, or its designee, at the Society's expense, in every proper way to secure the Society's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Society of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Society shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Society, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. Contractor further agrees that Contractor's obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

(c) ***License***. Contractor agrees that if in the course of performing the Services, Contractor incorporates into any Invention developed hereunder any invention, improvement, development, concept, discovery or other proprietary information owned by Contractor or in which Contractor has an interest, the Society is hereby granted and shall have a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such Invention.

(d) ***Agent***. Contractor agrees that if the Society is unable because of Contractor's unavailability for any reason to secure Contractor's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Society above, then Contractor hereby irrevocably designates and appoints the Society and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Contractor.

6. ***Originality and Noninfringement*****.**

Contractor represents and warrants that all materials and Services provided hereunder will be original with Contractor and that the use thereof by the Society or its customers, representatives, distributors or dealers will not infringe any patent, copyright, trade secret or other intellectual property right of any third party. Contractor agrees to indemnify and hold the Society harmless against any liability, loss, cost, damage, claims, demands or expenses (including reasonable attorneys' fees) of the Society or its customers, representatives, distributors or dealers arising out of any infringement or claim of infringement with respect to any materials or Services provided by Contractor.

7. ***Reports*****.**

Contractor agrees that Contractor will, from time-to-time during the term of this Agreement, keep the Society informed as to Contractor's progress in performing the Services hereunder and that Contractor will, as requested by the Society, prepare written reports with respect thereto. The Parties understand that the time required in the preparation of such written reports shall be considered time devoted to the performance of Contractor's Services.

8. ***Conflicting Obligations*****.**

(a) ***Performance***. Contractor acknowledges that Contractor will be available to perform the Services in a timely and responsible manner, except for occasional circumstances in which a

pre-existing clinical responsibility on the part of Contractor may conflict with a new commitment requested by the Society, subject to the requirements of the schedule of Services arranged by Society and Contractor pursuant to Section 1.3 of Exhibit A hereto. Failure to perform in a timely and responsible manner shall be a breach of this Agreement.

(b) ***No Conflicts***. Contractor represents and warrants that Contractor has no outstanding agreement or obligation that is in conflict with any provision of this Agreement, or that would preclude Contractor from complying with the provisions hereof, other than as disclosed on *Exhibit C* hereto. Contractor further represents and warrants that Contractor will not enter into any such conflicting Agreement during the term of this Agreement.

9. ***Term and Termination*****.**

(a) ***Commencement***. This Agreement will commence on the date first above written and will continue for a period of one year (the "Initial Term"). Unless 30 days' written notice of termination is given by either Party prior to the expiration of the Initial Term, or any subsequent Term, this Agreement shall renew for successive one-year periods.

(b) ***Termination***. This Agreement may be terminated as follows:

(i) Either Party may terminate this Agreement with 30 days' prior written notice to the other. Any such notice shall be addressed to such Party at the address shown below or such other address as such Party shall provide to the other, and shall be deemed given upon delivery if personally delivered, on the next business day if sent via overnight courier, or three days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

(ii) The Parties shall attempt to amend this Agreement upon receipt of any Governmental Action in order to comply with such Governmental Action. If the Parties, acting in good faith, are unable to make the amendments necessary to comply with such Governmental Action, or, alternatively, if either Party determines in good faith that compliance with the Governmental Action is impossible or infeasible, this Agreement shall terminate 10 days after one Party notifies the other of such fact. For purposes of this Section 9(b)(ii), the term "Governmental Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to the Society, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would: (A) constitute a violation of any federal, state or local law; or (B) subject either Party, or any of their respective employees or agents, to civil or criminal liability or prosecution on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement

(iii) If this Agreement is terminated for any reason within one-year of the date first above written, the Parties shall not enter into the same or substantially the same arrangement contemplated by this Agreement during the period which is one-year following the date first above written.

(c) ***Survival***. Upon such termination, all rights and duties of the Parties toward each other shall cease except:

(i) that the Society shall be obliged to pay, within 30 days of receipt of the Contractor's invoice, all amounts owing to Contractor for unpaid Services through the termination date; and

(ii) Sections 4, 5, 6, 9 and 11 shall survive termination of this Agreement.

10. ***Assignment.***

Neither this Agreement nor any right hereunder or interest herein may be assigned or transferred by the Society or the Contractor without the written consent of the other.

11. ***Arbitration and Equitable Relief.***

(a) ***Arbitration***. Except as provided in Section 11(b) below, the Society and Contractor agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement shall be settled by arbitration to be held in Santa Clara County, California before a single, neutral arbitrator associated with the Judicial Arbitration and Mediation Service ("JAMS"). The arbitrator shall be selected by the Parties or, if the Parties are unable to agree, by JAMS, in accordance with its selection practices. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. Unless otherwise required to preserve the enforceability of this arbitration clause, the Society and Contractor shall each pay one-half of the costs and expenses of such arbitration.

(b) ***Equitable Relief***. Contractor agrees that it would be impossible or inadequate to measure and calculate the Society's damages from any breach of the covenants set forth in Section 4 or 5 herein. Accordingly, Contractor agrees that if Contractor breaches Sections 4 or 5, the Society will have available, in addition to any other right or remedy available, the right to obtain from any court of competent jurisdiction an injunction restraining such breach or threatened breach and specific performance of any such provision. Contractor further agrees that no bond or other security shall be required in obtaining such equitable relief and Contractor hereby consents to the issuances of such injunction and to the ordering of such specific performance.

12. ***Miscellaneous*****.**

(a) ***Amendments and Waivers***. Any term of this Agreement may be amended or waived only with the written consent of the Parties.

(b) ***Entire Agreement***. This Agreement, including the Exhibits hereto, constitutes the entire agreement of the Parties and supersedes and replaces all oral negotiations and prior writings with respect to the subject matter hereof.

(c) ***Notices***. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier or overnight delivery service, or three (3) days after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(d) ***Governing Law***. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to its principles of conflict of laws.

(e) ***Legal Fees***. If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding, pursuant to Section 12, to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

(f) ***Severability***. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such unenforceable provision shall be deemed modified so as to be enforceable (or if not subject to modification then eliminated herefrom) for the purpose of those procedures to the extent necessary to permit the remaining provisions to be enforced.

(g) ***Counterparts***. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(h) ***Advice of Counsel***. EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

(i) ***Compliance with Laws*.** The Parties agree to abide by the Society's compliance policies and all federal, state or local laws, regulations, ordinances or other legal requirements in connection with the performance of the Services hereunder. In addition, at all times during this Agreement, Contractor shall have in effect all licenses, permits and authorizations for all local, state, federal and foreign governmental agencies to the extent the same are necessary to the performance of the Services hereunder and will verify all such licenses, permits and authorizations are in place before performing any Services under this Agreement. Consultant shall not perform any Services under this Agreement for which he does not hold all necessary licenses, permits and authorizations and will hold the Society harmless in all respects for any claims or actions resulting from Contractor's violation of this provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

JOHN ADLER, M.D.

Signature: /s/ John Adler

Name: John Adler, M.D.

Title: Contractor

Address:

Telephone:

Date: 3/29/06

THE CYBERKNIFE SOCIETY

Signature: /s/ Kristine Gagliardi

Name: Kristine Gagliardi

Title: Administrative Director of CyberKnife Society

Address: 1310 Chesapeake Terrace

Sunnyvale, CA 94089

Telephone:

Date: 4/5/06

Signature: /s/ Darren Milliken

Name: Darren Milliken

Address: 1310 Chesapeake Terrace

Sunnyvale, CA 94089

Title: General Counsel

Date: 4/4/06

EXHIBIT A

SERVICES

1. ***Description of Services***.

1.1. Contractor will serve as the President of the Society with such duties and responsibilities as are customarily associated with such position and as set forth in the Society's Bylaws. In addition, Consultant shall perform the following functions and duties:

1.1.1. **Users' Meeting.** Contractor will attend and participate in the annual Users' Meeting for four (4) days per year. Contractor's participation in the annual Users' Meeting will include, but is not limited to: chairing all scientific sessions and Society breakout sessions, reviewing all abstracts and selecting oral presentations and awards and participating in the PDC quarterly meeting at the Users' Meeting.

1.1.2. **PDC Meetings.** Contractor will attend and participate in certain PDC Meetings, as requested by the Society, up to two (2) per year with each lasting two (2) days, but excluding the PDC Meeting held at the annual Users' Meeting. Contractor's participation in such PDC Meetings will include, but is not limited to consulting with surgical specialists and radiation oncologists to develop new procedures using the CyberKnife.

1.1.3. **Publications/Books.** Contractor will use his contacts within the industry to drive other individuals to write and publish publications on Robotic Radiosurgery at Stanford University and at other sites. Contractor will also author at least three (3) publishable peer-reviewed articles or chapters in a book on Robotic Radiosurgery, as requested by Society, including at least one (1) publishable peer-reviewed article that involves other CyberKnife centers or is a multi-center study.

1.1.4. **Society's Website.** Contractor will write and edit at least two (2) pages per month on the Society's website, as requested by Society. Contractor will also participate each week in the online discussion board on the Society's website. Contractor will attend and participate in the monthly online meetings and webcast on the Society's website.

1.1.5. **Task Force.** Contractor will participate in a task force advising the leadership of AANS/CNS on professional fees for Robotic Radiosurgery using the CyberKnife.

1.2. The Parties acknowledge that the Society intends to appoint a new President during the term of this Agreement. Upon the appointment of a new President of the Society, Contractor shall assume the title of President Emeritus. As President Emeritus:

1.2.1. Contractor shall no longer be responsible for the duties and responsibilities that are customarily associated with, or which are enumerated in the Society's Bylaws for, the position of President, however, Contractor will aid in the transition of the new President and help to educate the new President on the Society.

1.2.2. Contractor shall continue to perform those functions and duties set forth in Sections 1.1.1 through 1.1.5 above.

1.3. As soon as practicable following the execution of this Agreement, Contractor and the Society shall meet to schedule the specific Services to be performed during the first calendar quarter that this Agreement is in effect. Thereafter, Contractor and the Society shall meet at least thirty (30) days in advance of the end of each calendar quarter to schedule the Services to be performed during the subsequent calendar quarter.

EXHIBIT B

COMPENSATION

1. **President Compensation.** Contractor shall be compensated for Services performed according to this Agreement as President or President Emeritus, as applicable, as follows:

1.1. *Compensation for Users' Meeting:*

- Attendance/Participation in annual Users' Meeting: $3,375 per day
- Maximum Annual Compensation for Attendance/Participation in annual Users' Meeting:* $13,500 per year

  * (maximum annual compensation for Users' Meeting is based on the maximum attendance/participation of 4 days per year)

1.2. *Compensation for PDC Meetings:*

- Attendance/Participation in certain PDC Meetings: $7,000 per meeting
- Maximum Annual Compensation for Attendance/Participation in PDC Meetings:* $14,000 per year

  * (maximum annual compensation for PDC Meetings is based on the maximum attendance/participation of 2 PDC Meetings per year)

1.3. *Compensation for Publications/Books:*

- Drive Publications on Robotic Radiosurgery/Articles or Chapters in Robotic Radiosurgery Book: $23,500 per year

1.4. *Compensation for Society's Website:*

- Writing/Editing pages on Society's website; participating in online discussion board and online meetings/webcast: $20,000 per year

1.5. *Compensation for Participating in Task Force:*

- Participate in task force advising leadership of AANS/CNS on professional fees for CK Radiosurgery: $5,000 per year

1.6. *Total Compensation/Payment*. As indicated above, Contractor's maximum possible annual compensation from Society is $76,000 to be paid quarterly in advance, in four (4) equal installments of $19,000 per quarter beginning on the day that this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Should Contractor not perform certain of the above objectives, then future quarterly payments to Contractor may be offset by the corresponding amount of the Services not performed. If at the end of the term of this Agreement, certain Services were not performed, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor shall reimburse Society for the corresponding amount of the services not performed within thirty (30) calendar days.

EXHIBIT C

LIST OF POTENTIAL CONFLICTS

—none—
/s/ DM

[ACCURAY LOGO]

AMENDMENT ONE TO INDEPENDENT CONTRACTOR AGREEMENT

This Amendment One to Independent Contractor Agreement ("Amendment") is made, effective as of October 3, 2006 ("Effective Date"), by and between Accuray Incorporated, a California Corporation with offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, ("Accuray"), and John Adler, M.D. ("Contractor"), each separately being a "Party" and collectively the "Parties."

On April 4, 2006, Contractor and The CyberKnife Society ("CKS"), a California non-profit organization, entered into an Independent Contractor Agreement (the "Agreement") whereby Contractor agreed to provide certain services to CKS as an independent contractor and, in exchange, CKS agreed to provide Contractor with certain compensation. On October 3, 2006 (the "Dissolution Date"), CKS filed a Certificate of Dissolution with the California Secretary of State. In connection with the dissolution of CKS, Accuray agreed that it would assume all of the obligations and responsibilities of CKS, including the Agreement. In consideration of the mutual promises contained in this Amendment, the Parties want to amend the Agreement on the terms and conditions set forth herein.

The Parties hereby agree as follows:

1. As of the Dissolution Date, Accuray agrees to assume all of CKS' rights and obligations under the Agreement and Contractor consents to such assumption by Accuray.

2. As of the Dissolution Date, all references to the "CyberKnife Society" or the "Society" in the Agreement shall be deemed to refer to Accuray.

3. All provisions of the Agreement, except as expressly modified by this Amendment, will remain in full force and effect and are hereby ratified and reaffirmed. In the case of direct conflict or conflict by reason of interpretation between any provision of this Amendment and the Agreement, this Amendment shall control and supersede the terms of the Agreement.

4. This Amendment, in combination with the Agreement, contains the entire agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral.

[SIGNATURE PAGE FOLLOWS]

[ACCURAY LOGO]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Effective Date by their duly authorized representatives. The Parties acknowledge and agree that this Amendment does not become effective until it has been signed by all parties indicated below.

JOHN ADLER, M.D.		ACCURAY, INCORPORATED	
Signature:	/s/ JOHN ADLER	Signature:	/s/ ERIC LINDQUIST
Name:	John Adler, M.D.	Name:	Eric Lindquist
Title:	Contractor	Title:	SVP, Chief Marketing Officer
Address:		Address:	1310 Chesapeake Terrace
			Sunnyvale, CA 94089
Telephone:		Telephone:	
Date:		Date:	
		Signature:	/s/ DARREN MILLIKEN
		Name:	Darren Milliken
		Title:	General Counsel
		Address:	1310 Chesapeake Terrace
			Sunnyvale, CA 94089
		Telephone:	
		Date:	

QuickLinks

Exhibit 10.16

Execution Version

LICENSE AGREEMENT

This License Agreement is made as of the 12th day of December, 2004 (the "*Effective Date*"), by and between Accuray Incorporated, a California corporation ("*Licensor*"), and American Science and Engineering, Inc., a Massachusetts corporation ("*Licensee*"). Licensee and Licensor are each sometimes referred to herein as a "*Party*" and collectively as the "*Parties*."

Background

Licensor and Licensee are also parties to an Asset Purchase Agreement dated December 12, 2004 ("*Asset Purchase Agreement*"). Under the Asset Purchase Agreement, Licensor is purchasing the Acquired Assets (as defined therein) from the Licensee, including the Intellectual Property (as defined therein, including without limitation, the Division Documentation pertaining to the Intellectual Property).

To allow Licensee to use the Intellectual Property in various lines of business, Licensee desires to obtain a license from Licensor of the Intellectual Property. Licensor is willing to grant Licensee such a license on the terms and conditions stated in this License Agreement.

Therefore, in consideration of the agreements contained in this License Agreement and in the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. *Definitions.*

1.1 "*Affiliate*" means with respect to any Person, any other Person that controls, is controlled by or is under common control with such Person.

1.2 "*Homeland Security Market*" means detection systems for use by domestic and foreign commercial, government and military customers for security related purposes including force protection for the Department of Defense, but in no event including any medical application.

1.3 "*Non-Destructive Testing Market*" means world-wide detection and inspection systems for use in government and commercial non-destructive evaluation of finished product or component quality, but in no event including any medical application.

1.4 "*Person*" means an individual, company, corporation, partnership, joint venture, limited liability company, association, trust, unincorporated organization, or other entity, domestic or foreign, including a government or political subdivision or an agency or instrumentality thereof.

1.5 "*X-Ray Target Technology*" means the High Power X-ray Target Design technology identified in Schedule 3.9 of the Asset Purchase Agreement, and any technical information relating thereto.

1.6 All other capitalized terms not defined in this License Agreement have the meaning given them in the Asset Purchase Agreement.

2. *License Grants*.

2.1 *Exclusive License*. Subject to the terms and conditions of this License Agreement, Licensor grants Licensee an irrevocable, exclusive (even as to Licensor), worldwide, fully paid license of the Intellectual Property solely for use in connection with the design, development, marketing, manufacturing, sales and service of products intended for use in the Homeland Security Market and the Non-Destructive Testing Market.

2.2 *Non-exclusive License*. Subject to the terms and conditions of this License Agreement, Licensor grants Licensee a non-exclusive, worldwide, fully paid license of the Intellectual Property for all uses other than (i) those referred to in Section 2.1 above and (ii) medical use or applications.

2.3 *No further rights*. Except as otherwise expressly stated in this License Agreement, Licensor retains all right, title and interest in and to the Intellectual Property.

2.4 *Licenses to New Developments*. Subject to the terms and conditions of this License Agreement, Licensee grants to Licensor (i) an exclusive, worldwide, fully paid license under any intellectual property rights that Licensee may obtain with respect to any modifications, improvements, enhancements or new developments (whether patentable or not) arising from the Intellectual Property ("Licensee Improvements") for medical uses or applications, and (ii) a non-exclusive, worldwide, fully paid license with respect to such Improvements for all uses other than those described in Section 2.1 above. Subject to the terms and conditions of this License Agreement, Licensor grants to Licensee (i) an exclusive, worldwide, fully paid license under any intellectual property rights that Licensor may obtain with respect to any modifications, improvements, enhancements or new developments (whether patentable or not) arising from the Intellectual Property ("Licensor Improvements") for use in connection with the design, development, marketing, manufacturing, sales and service of products intended for use in the Homeland Security Market and the Non-Destructive Testing Market, and (ii) a non-exclusive, worldwide, fully paid license with respect to such Improvements for all uses other than medical uses or applications. Notwithstanding the foregoing grant of licenses with respect to Licensor Improvements and Licensee Improvements, neither party shall have any obligation to advise the other party regarding the existence of such Improvements or to deliver any Improvement to the other party or any information or documentation with respect thereto.

3. *Patent Rights Subject to Reversion*

3.1 For a period of one year commencing on the Closing Date (the "Filing Period"), Licensor shall have the right, in its sole discretion, to file one or more patent applications for any of the inventions included in the X-Ray Target Technology. If Licensor chooses to file a patent application during the Filing Period, it shall notify the Licensee of the filing of the patent application within thirty (30) days of the day the patent application is filed. If upon the expiration of the Filing Period Licensor has not filed a patent application for any invention included in the X-Ray Target Technology, Licensor hereby grants to Licensee the right, which right may be exercised in Licensee's sole discretion, at Licensee's sole cost and expense, to file a patent application for such invention at any time thereafter, but such application shall be solely within Licensee's fields of exclusivity as set forth in Section 2.1, unless otherwise agreed in writing by Licensor.

3.2 If at any time during the Filing Period, or following expiration of the Filing Period, but before publication of any patent application that Licensee may thereafter elect to file, either Licensor or Licensee intends, through commercialization or otherwise, to disclose subject matter pertaining to the X-Ray Target Technology, notice shall be provided to the other party not less than thirty (30) days prior to any such disclosure.

3.3 Nothing set forth in this Section 3 is intended to reduce or restrict the licenses granted to Licensee pursuant to Section 2 and any patents obtained by Licensor with respect to the X-Ray Target Technology shall be deemed Licensor Improvements.

3.4 In the event that Licensee is granted and exercises the right to file a patent application as set forth in Section 3.1, any resulting patent(s) shall be deemed Licensee Improvements and subject to the licenses granted to Licensor in Section 2.4.

4. *Warranties.*

4.1 *Negation*. Licensee acknowledges that, before the effective date of this License Agreement, Licensee controlled the Intellectual Property, and that it is therefore reasonable for Licensor to not provide any representations or warrantees with respect to the Intellectual Property or the licenses granted in this License Agreement. LICENSOR THUS PROVIDES ALL RIGHTS GRANTED LICENSEE UNDER THIS LICENSE AGREEMENT AS IS, AS AVAILABLE, WHERE IS AND WITH ALL FAULTS. Among other things, Licensor disclaims any and all warranties, whether express or implied, including by not limited to any implied warranty of merchantability, of fitness for a particular purpose, of title, of non-infringement or arising out of any course of dealing.

4.2 *No Indirect Liability*. For the same reasons, Licensee acknowledges and agrees that Licensor shall have no liability for any special, consequential, lost profits, expectation, punitive or other indirect damages in connection with any claim arising out of or related to this License Agreement, including but not limited to damages for loss of business profits and/or business interruption, whether foreseeable or not, and whether grounded in tort (including negligence), strict liability, contract, or otherwise, even if Licensor has been advised of the possibility of such damages.

4.3 *By Licensee*. Licensee represents and warrants that it has full corporate power and authority and has taken all required corporate action necessary to permit it to execute and deliver and to carry out the terms of this License Agreement and none of such actions will violate any law, rule, regulation, statute or ordinance applicable to Licensee, violate any provisions of Licensee's Articles of Organization or By-Laws, each as amended, or result in any breach of, or default under, under any agreement, instrument, order or judgment to which Licensee is a party or by which any of its assets may be bound. Licensee further represents and warrants that this License Agreement constitutes the valid and legally binding obligation of Licensee enforceable against Licensee in accordance with its respective terms, subject to applicable bankruptcy, insolvency, moratorium, reorganization and other general laws affecting the rights and remedies of creditors and general principles of equity, whether considered in a proceeding in equity or at law.

5. *Indemnification.*

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

5.2 When making a claim for indemnification hereunder, the Indemnitee(s) shall notify Licensee of the claim in writing, describing the claim, the amount thereof, and the basis therefor. Licensee shall respond to each such claim within thirty (30) days of receipt of such notice. If such demand is based on a claim by a third party, Licensee shall have the right to assume control of the defense thereof, including at its own expense, employment of counsel satisfactory to the Indemnitee(s), and, in connection therewith, the Indemnitee(s) shall reasonably cooperate to make available to Licensee all pertinent information under its control.

No settlement may be made by Licensee without the consent of Licensor, unless: i) such settlement only requires the payment of money damages and all such amounts are paid in full by Licensee; and ii) Licensor and the Indemnitee(s) are released from all claims of the relevant third party or parties. Licensor may, at its own expense, participate in any proceeding relating to any such claims as to which Licensee has assumed control pursuant to this License Agreement.

6. *Termination.*

6.1 This License Agreement and the licenses granted by Licensor to Licensee hereunder may be terminated by Licensor for any material breach by Licensee (including but not limited to acting outside the scope of the licenses granted herein or breaching the limitations on assignment or transfer). Licensor shall have a period of sixty (60) days from the date it first learns of the breach to provide Licensee with written notice of the breach, such notice to include details of the alleged breach. Licensee shall than have sixty (60) days from the date it receives such notice to respond in writing to Licensor explaining why no breach has occurred or Licensee's plan to cure such breach. If after receiving such response, Licensor continues to believe a breach exists and/or agrees with Licensee's proposed plan to cure such breach, Licensee shall have sixty (60) days from receipt by Licensor of the Licensee's response to cure the breach. Nothing contained in this Section 5.1 shall limit or preclude Licensor from seeking immediate equitable relief in the event that Licensee acts outside the scope of the licenses granted or discloses Licensor's trade secrets.

6.2 *Bankruptcy*. If Licensee becomes the subject of a voluntary or involuntary petition in bankruptcy or of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, and such petition or proceeding is not dismissed within sixty (60) days after filing, Licensor may terminate the rights, licenses, immunities and covenants granted hereunder to Licensee upon thirty (30) days written notice of termination to Licensee.

7. *Miscellaneous.*

7.1 *Notices*. All notices to a Party hereto shall be in writing and delivered in person or mailed by certified mail, return receipt requested, or sent by Federal Express with receipt showing acceptance signature, to such Party at its address set forth below (or such other address as it may from time to time designate in writing to the other Party):

If to Licensor:
Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089

with a copy to:

Ralph Pais
Fenwick & West LLP
801 California Street
Mountain View, CA 94041

If to Licensee:
American Science and Engineering, Inc.

with a copy to:
Ropes & Gray LLP
One International Place
Boston, MA 02110
Attention: David B. Walek

Notice shall be deemed given upon receipt, on the next business day in the case of Federal Express delivery, and on the third business day after mailing in the case of mailing.

7.2 *Reasonable Assurances*. Each Party agrees that it will execute and deliver, or cause to be executed and delivered, on or after the date of this License Agreement, all such other instruments and will take all reasonable actions as the other Party may reasonably request from time to time in order to effectuate the provisions and purposes of this License Agreement.

7.3 *No Waiver*. No waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition of the License Agreement shall operate as a waiver of, or an estoppel with respect to any subsequent or other failure.

7.4 *Amendments and Waivers*. This License Agreement may be modified or amended only by a writing signed by the Parties. No waiver of any term or provision hereof shall be effective unless in writing signed by the Party waiving such term or provision.

7.5 *Governing Law*. This License Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard as to principles of conflicts of law.

7.6 *Headings, Interpretation*. The headings in this License Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this License Agreement. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, as appropriate.

7.7 *Binding Effect and Benefits; Assignment*. This License Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. Notwithstanding the foregoing, in no event may Licensee assign this License Agreement (whether by operation of law, upon a change of control or otherwise) without the prior written consent of Licensor to any party that manufactures or sells products for medical uses or applications which have substantially similar purposes to those products manufactured or sold by the Licensor on the date hereof. Any attempted assignment, transfer or delegation, without such consent, will be void.

7.8 *Entire Agreement*. This writing embodies the entire agreement and understanding between the Parties with respect to the transaction contemplated herein and supersedes all prior discussions, understandings and agreements concerning such matters, except for the Asset Purchase Agreement, and other documents executed pursuant thereto, all of which agreements remain in full force and effect.

7.9 *Counterparts*. This License Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument, and any of the Parties hereto may execute this License Agreement by signing any such counterpart.

7.10 *No Third Party Rights*. This License Agreement is not intended and shall not be construed to create any rights in any Persons other than Licensor and Licensee and no Person shall assert any rights as third party beneficiary hereunder.

7.11 *Expenses*. Each Party shall bear the expenses incurred by it relating to the transactions contemplated by this License Agreement, including without limitation fees and expenses of counsel.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this License Agreement as a sealed instrument as of the date first above written.

ACCURAY INCORPORATED

By: /s/ EUAN S. THOMSON

Name: Euan S. Thomson
Title: President and CEO

AMERICAN SCIENCE AND ENGINEERING, INC.

By: /s/ ANTHONY R. FABIANO

Name: Anthony R. Fabiano
Title: President and CEO

QuickLinks

LICENSE AGREEMENT

Exhibit 10.17

ASSIGNMENT AND ASSUMPTION OF LICENSE
AND CONSENT BY SUPPLIER

This Assignment and Assumption of License and Consent by Yuri Batygin and Anatoliy Zapreiev (collectively, the "***Supplier***") is made as of January 10, 2004 by and between American Science and Engineering, Inc., a Delaware corporation ("***Assignor***"), and Accuray Incorporated, a California corporation ("***Assignee***"), with reference to the following facts (this "***Assignment***"):

WHERAS, the Supplier and the Assignor are the current parties to that certain Beampath and Interface Program License Agreement (the "***License***") dated November 1, 2004 for the use of certain software as described more fully in the License;

WHEREAS, the Assignor desired to transfer and assign to the Assignee all of the rights of the Assignor under the License and the Assignee desires to accept such transfer and assignment and assume all obligations of the Assignor thereunder; and

WHERAS, the Assignor and Assignee acknowledge and agree that the foregoing assignment and assumption of the License requires the prior written consent of the Supplier as provided in the License.

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

1. *Assignment and Assumption*. Effective as of the Closing Date, as defined in the Asset Purchase Agreement by and between the Assignor and Assignee, dated as of December 12, 2004 (the "***Effective Date***"), the Assignor transfers and assigns to the Assignee all the rights of the Assignor under the License. The Assignee accepts such transfer and assignment and assumes all obligations of the Assignor under the License.

2. *Counterparts*. This Assignment may be executed in one or more counterparts (including a facsimile of the same), each of which shall be deemed an original, but all of which shall constitute one agreement. Facsimile signatures shall constitute a valid and binding method of execution of this instrument by a party.

3. *Authority*. Each party represents and warrants to the other that it is duly authorized to enter into this Assignment and perform its obligations without the consent or approval of any other party and that the person signing on its behalf is duly authorized to sign on behalf of such party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, this Assignment has been executed as of the date first above written.

ASSIGNOR:

AMERICAN SCIENCE AND ENGINEERING, INC.

By: /s/ ANDREY V. MISHIN

Name: Andrey V. Mishin
Title: Vice President

ASSIGNEE:

ACCURAY INCORPORATED

By: /s/ CHRIS A. RAANES 1/10/05

Name: Chris A. Raanes
Title:

CONSENT BY SUPPLIER AND WAIVER OF NOTICE

The undersigned is the Supplier under that License described in this Assignment. At the request of the Assignor and the Assignee, the undersigned, as Supplier under the License, consents to the assignment and assumption set forth in the Assignment, such consent granted pursuant to the above mentioned License and serving in part as an amendment to the License, and waives any notice provisions contained in the License that are applicable to such consent; provided, however, that

(a) Such consent will not release the Assignor from any obligations accruing or arising prior to the Effective Date of this Assignment;

(b) As a result of this Assignment, the Assignee will be responsible for payment of all sums and the performance of all obligations formerly belonging to the Assignor under the License;

(c) The consent to the foregoing assignment shall not be deemed consent to any subsequent assignment, sublease, license or other transfer of the License;

This consent to this Assignment has been executed as of date set forth below the Supplier's signatures below.

SUPPLIER:

/s/ YURI BATYGIN

Prof. Yuri Batygin

/s/ ANATOLIY ZAPREIEV

Anatoliy Zapreiev

Dated: January 10, 2005

Yuri Batygin and Anatoliy Zapreiev, jointly called

("Supplier")

BEAMPATH AND INTERFACE PROGRAM LICENSE AGREEMENT

with AMERICAN SCIENCE AND ENGINEERING, INC.

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4. *Limited Warranty.* Supplier warrants that the Media will be free from defects in materials or workmanship under normal use during the first ninety (90) days from the date of delivery to you, and that it transfers good title to the Media and Documentation to you. No dealer, distributor, agent, or employee of Supplier is authorized to modify or add to this exclusive warranty.

EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, THE MATERIALS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY, EITHER EXPRESS OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES AGAINST INFRINGEMENT OR OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. YOU ACCEPT THE ENTIRE RISK THAT THE PROGRAMS WILL NOT MEET YOUR NEEDS OR EXPECTATIONS AND THAT THEIR OPERATION WILL NOT BE UNINTERRUPTED OR ERROR-FREE.

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(a) replacement of any Media that does not satisfy Supplier's "Limited Warranty" and is returned to Supplier within the ninety (90) day time limit, with proof of the date of receipt, or

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BECAUSE SOFTWARE IS INHERENTLY COMPLEX AND MAY NOT BE COMPLETELY FREE OF ERRORS, YOU ARE ADVISED TO VERIFY YOUR WORK. IN NO EVENT WILL SUPPLIER BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, INCLUDING, ANY LOST PROFITS, LOSS OF DATA, COSTS OF RECOVERING DATA, COSTS OF SUBSTITUTE SOFTWARE, CLAIMS BY THIRD PARTIES, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE, OR INABILITY TO USE, THE MEDIA, DOCUMENTATION, OR PROGRAMS, EVEN IF SUPPLIER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. *Infringement*. Supplier shall defend any suit or proceeding brought against you so far as it is based on a claim that the practicing of the Program or the use or copying of any Material, as such and not in combination with any other article or process, constitutes an infringement of any patent or copyright in the United States, if notified within ten (10) calendar days after commencement and given full and complete authority and assistance (at Supplier's expense) for the defense. Supplier shall pay all damages and costs awarded therein against you that do not exceed the fees received by Supplier hereunder, except that Supplier will not be responsible for any compromise made without its consent. If such an infringement claim is made or threatened, at its option Supplier shall either procure for you the right to continue using the Material or practicing the Program, modify it so it becomes non-infringing, replace it with a non-infringing counterpart, or accept the return of the Material, terminate the License, and refund a reasonable portion of the fees paid. THIS PARAGRAPH STATES

SUPPLIER'S ENTIRE OBLIGATION TO YOU WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

7. *Supplier's Remedies*. In addition to the termination rights set forth under "Term" above:

(a) Since unauthorized transfer of the Materials or information in them will substantially diminish the value to Supplier of the trade secrets and proprietary properties involved, if you commit a breach of any obligation related to confidentiality, nondisclosure, or return of Materials, or if such a breach is likely to occur, Supplier shall be entitled to equitable relief (including orders for specific performance and injunctions) as well as money damages.

(b) The rights and remedies of Supplier set forth are not exclusive and are in addition to any of the rights and remedies provided by statute, at law, or in equity.

8. *Export Provisions*. You acknowledge that any export of the Programs, Media and Documentation may be subject to U.S. export control laws. You agree that you will not export or reexport these items, directly or indirectly, except in accordance with such laws.

9. *General*.

(a) You may not sublicense, assign, or transfer this License or the Materials to any other person, except as expressly permitted by Supplier in writing. Any attempt to do so otherwise is void. The supplier grants rights to AS&E to sublicense this software to Accuray as a result of the Asset Purchase Agreement of certain assets of AS&E High Energy Systems Division.

(b) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts of the United States of America. If any part of this Agreement violates applicable law, that part of the Agreement shall be deemed to be amended to the extent necessary to comply with such law; the validity of the remaining terms shall not be affected. The failure of either party to exercise any right hereunder shall not be deemed a waiver of that right or any other.

"Granted"

Prof. Yuri Batygin	/s/ Yuri Batygin	12/31/2004
Dr. Anatoliy Zapreev	/s/ Anatoliy Zapreev	12/31/2004

"Reviewed and Accepted"

Andrey Mishin, Vice President and General Manager, AS&E HESD

Dated 31 December, 2004	/s/ Andrey Mishin	12/31/04

QuickLinks

Exhibit 10.18

NONEXCLUSIVE END-USER SOFTWARE

LICENSE AGREEMENT

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

AND

ACCURAY, INC.

OFFICIAL USE ONLY

May be exempt from public release under the Freedom of Information Act
(5 U.S.C. 552), exemption number and category:
Exemption 4, Commercial/Proprietary Information
Department of Energy review required before public release
Name/Org: *Sharon Trujillo, TT Division* Date: *August 29, 2005*
Guidance (if applicable)

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

TABLE OF CONTENTS

NON-EXCLUSIVE SOFTWARE LICENSE AGREEMENT

THIS LICENSE AGREEMENT, hereinafter referred to as "License Agreement" is entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a nonprofit educational institution and a public corporation of the State of California having its principal office at 1111 Franklin Street, Oakland, CA 94607, hereinafter referred to as the "University," and Accuray Inc., 1310 Chesapeake Terrace, Sunnyvale, CA 94089 hereinafter referred to as the "Licensee," the parties to this License Agreement being referred to individually as a "Party," and collectively as "Parties."

The University conducts research and development at Los Alamos National Laboratory for the U.S. Government under Contract No. W-7405-ENG-36, hereinafter referred to as the "Contract," with the U.S. Department of Energy, hereinafter referred to as the "DOE".

Rights in inventions, technical data and software made in the course of the University's research and development at Los Alamos National Laboratory are governed by the terms and conditions of the Contract.

Certain electron-linac particle-dynamics software entitled "PARMELA", Version 3, has been developed in the course of the University's research and development at Los Alamos National Laboratory.

The University desires that such software be developed and utilized to the fullest extent possible so as to enhance the accrual of economic and technological benefits to the U.S. domestic economy, and is therefore willing to grant an nonexclusive license to the Licensee in the Intellectual Property Rights that protect the software.

The Licensee desires to obtain from the University certain nonexclusive rights for the commercial use of the software.

Now, therefore, the Parties agree as follows:

1. DEFINITIONS

1.1 "Licensed Software" means the computer software and related documentation identified in Appendix A.

1.2 "Intellectual Property Rights" means rights assertable by the University in the Licensed Software under U.S. or foreign laws including, but not limited to, copyright statutes, patent statutes, or other applicable laws.

1.3 "Authorized Site(s)" means any location owned or controlled by Licensee identified in Appendix C of this License Agreement but excluding all other locations where the Licensee may have research or administrative facilities or office.

2. GRANT

2.1 Except as otherwise provided herein, the University hereby grants to the Licensee the personal, non-transferable, and nonexclusive right and license under the University's INTELLECTUAL PROPERTY RIGHTS for use at the Authorized Site(s) to perform the following:

(a) To install the Licensed Software on an Authorized Site(s) as described in Appendix C, which is incorporated herein by reference;

(b) To use, execute, reproduce, perform publicly and display publicly the Licensed Software, in executable form only, on the Authorized Site for the sole purpose of serving the internal needs of Licensee's business;

(c) To make copies of the Licensed Software as necessary for the foregoing purpose, and one copy solely for non-productive back-up purposes in accordance with Licensee's standard procedures, provided that the Licensee accounts for such copies;

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2.3 The license and right granted in Article 2.1 shall be subject to the following limited license granted by the University to the U.S. Government:

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2.4 The University expressly reserves the right to use, reproduce, prepare derivative works, perform publicly and display publicly, the Licensed Software for commercial, educational or research purposes.

2.5 Licensee shall provide within ninety (90) days written notice of any errors or omissions to Licensed Software Licensee has identified.

2.6 Nothing contained in this License Agreement shall preclude Licensee from developing a noninfringing product.

2.7 Rights not expressly granted to the Licensee herein are expressly reserved to the University.

3. LICENSE FEE

3.1 In consideration for the rights, privileges and license granted under this License Agreement, the Licensee must pay to the University the fees specified in Appendix B, incorporated herein by reference.

3.2 All payments due the University must be paid in U.S. currency to the University, at the address set forth in Article 15.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 The Licensed Software contains substantial know-how of the University, and Licensee shall employ reasonable security precautions to maintain the nondisclosure or confidentiality of such know-how. As to system information or other information furnished to Licensee by the University, Licensee shall at all times prevent disclosure or dissemination of the know-how

embodied therein to any person, firm, organization, or employee, except as necessary to exercise the rights granted to Licensee hereunder, provided such person, firm, organization, or employee has agreed to comply with the terms of this License Agreement relating to the same.

4.2 Except as otherwise provided herein, the University claims and reserves all rights and benefits afforded under federal and international copyright law in all programming and documentation comprising Licensed Software as copyrighted works.

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4.4 If Licensee management or designated person(s) specified in Article 15 become aware of the following, they will (a) notify the University immediately of the unauthorized possession, use or knowledge of any Licensed Software, materials, other items or confidential information or know-how supplied or made available to the Licensee under this License Agreement, by a person or organization not authorized by this License Agreement to have such possession, use or knowledge and (b) assist in correcting any such unauthorized possession, use or knowledge and (c) cooperate with the University in any litigation against third parties deemed necessary by the University to protect it intellectual property.

4.5 To assist the University in the protection of its intellectual property, the Licensee will provide to the University, upon written request of the University, the Licensee's confidentiality policies and procedures relating to the safeguarding of the University's Licensed Software and intellectual property material.

5. TERM OF THE LICENSE AGREEMENT

5.1 This License Agreement will be effective upon execution by the Parties and the University's receipt of the License Issue Fee specified in Appendix B.

5.2 This License Agreement is in full force and effect from the effective date and remains in effect until the expiration of the University's Intellectual Property Rights, unless sooner terminated by operation of law or by acts of either of the Parties in accordance with the terms of this License Agreement.

6. TERMINATION BY THE UNIVERSITY

6.1 If the Licensee fails to pay any fee when due, or if the Licensee breaches any other material term of this License Agreement, the University may give written notice of default to the Licensee. If the Licensee fails to cure the default within thirty (30) days from the date of delivery of the notice of default to the Licensee, the University has the right to terminate this License Agreement. This License Agreement will terminate upon delivery of written notice of termination to the Licensee. Termination does not relieve the Licensee of its obligation to pay license fees due or owing at the time of termination and does not impair any accrued right of the University.

7. TERMINATION BY THE LICENSEE

7.1 The Licensee may terminate this License Agreement by giving written notice to the University. Such termination will be effective ninety (90) days from the date of delivery of the notice, and all the Licensee's rights under this License Agreement will cease as of that date.

7.2 Termination pursuant to this Article does not relieve the Licensee of any obligation or liability accrued by the Licensee prior to the effective date of termination or affect any rights of the University arising under this License Agreement prior to termination.

8. DISPOSITION OF LICENSED SOFTWARE ON HAND UPON TERMINATION

8.1 Upon termination of this License Agreement by either Party the Licensee shall provide the University with a written list of all Licensed Software in use by Licensee and shall destroy or return to the University all copies of the Licensed Software in the possession of Licensee. In the case where the Licensee destroys the Licensed Software, the Licensee will provide to the University a certificate verifying destruction of the Licensed Software.

9. USE OF NAMES, TRADENAMES AND TRADEMARKS

9.1 Nothing contained in this License Agreement confers any right to use in advertising, publicity, or other promotional activities any name, tradename, trademark, or other designation of either Party hereto or the Department of Energy or Los Alamos National Laboratory (including any contraction, abbreviation, or simulation of any of the foregoing). Unless required by law, the use of "University of California," "The Regents of the University of California," or the name of any facility or campus of the University of California is expressly prohibited.

9.2 The University may disclose to third parties the existence of this License Agreement and the extent of the grant in Article 2, but will not disclose information identified as proprietary by the Licensee herein, if any, except where the University is required to release information under either the California Public Records Act or other applicable law. A decision to release information under applicable law will be at the sole discretion of the University.

9.3 The Licensee may disclose to third parties the existence of this License Agreement and the terms and conditions to the extent determined appropriate by the Licensee.

9.4 The University acknowledges that the Licensee considers Appendix B of this License Agreement to contain proprietary business information of the Licensee and Appendix B is marked as such. All other portions of this License Agreement are non-proprietary.

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10.1 The University warrants that it has the lawful right to grant this license, subject to authorization being granted by DOE for the University to assert copyright in the Licensed Software.

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10.2 Nothing in this License Agreement will be construed as:

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(b) an obligation to bring or prosecute actions or suits against third parties for copyright infringement;

(c) conferring by implication, estoppel, or otherwise any license or rights under any patents or copyright of the University or the U.S. Government other than the University's Intellectual Property Rights; or

(d) an obligation by the University or the U.S. Government to furnish any know-how, technical assistance, or technical data other than as stated in Appendix A.

10.3 NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR THE UNIVERSITY NOR ANY OF THEIR EMPLOYEES, AGENTS OR CONTRACTORS MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY SOFTWARE, INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

11. INFRINGEMENT

11.1 In the event the Licensee management or designated person(s) in Article 15 become aware of the substantial infringement of any of the University's Intellectual Property Rights by a third party, Licensee shall inform the University and shall provide the University with available evidence of such infringement. The University shall use its best efforts to terminate such infringement of any of the University's Intellectual Property Rights by a third party without litigation, and may in its sole discretion initiate litigation at its own expense, but shall be under no obligation under this Agreement to bring any such legal action. University will keep Licensee informed of any significant developments relating to any such substantial infringement reported by Licensee.

12. WAIVER

12.1 No waiver by either Party of any breach or default of any of the covenants or terms of this License Agreement will be deemed a waiver as to any prior, subsequent and/or similar breach or default.

13. ASSIGNMENT AND CONTROLLING INTEREST

13.1 This License Agreement may be assigned by the University, but is personal to the Licensee and assignable by the Licensee only with the prior written consent of the University.

13.2 The University may withhold consent for an assignment or may choose to terminate the License Agreement upon a change in controlling interest under circumstances including, but not limited to, the following:

(a) the assignee or entity acquiring a controlling interest is located in, doing business with, or organized under the laws of a country that the U.S. Department of Energy considers to be a sensitive country, such consideration to be based on U.S. Department of Energy internal policies and procedures at the time the assignment or change of controlling interest occurs;

(b) the University reasonably concludes that the assignee or entity acquiring a controlling interest is not capable of meeting the Licensee's obligations under this License Agreement;

(c) the University reasonably concludes that the assignee or entity acquiring a controlling interest is not capable of complying with U.S. Department of Energy policies in effect at the time the assignment or change of controlling interest occurs; or

(d) the assignee or entity acquiring a controlling interest refuses to agree to any of the terms and conditions of this License Agreement.

14. INDEMNIFICATION

14.1 The Licensee will indemnify, hold harmless, and defend the University and the U.S. Government, their officers, employees, and agents; the sponsors of the research that led to the Licensed Software; the authors of the Licensed Software and their employers against any and all claims, suits, losses, damage, costs, fees, and expenses resulting from or arising out of exercise of this license. This indemnification will include, but will not be limited to, any product liability.

15. NOTICES

15.1 Any notice or payment required to be given to either Party will be deemed to have been properly given and to be effective on the date;

(a) if delivered in person;

(b) mailed by first-class certified mail;

(c) mailed by any express carrier service that requires the recipient to sign the documents demonstrating the delivery of such notice of payment; or

(d) Facsimile

to the respective addresses given below.

In the case of the Licensee:
Accuray Inc.
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Attention: Mike Hernandez
Telephone: (408) 716-4799
Facsimile: (650) 969-6579
Email address: mhernandez@accuray.com

In the case of the University:
Los Alamos National Laboratory
Technology Transfer Division
P.O. Box 1663, Mail Stop C334
Los Alamos, New Mexico 87545
Attention: License Compliance Officer
Telephone: (505) 665-9091
Facsimile: (505) 665-0154

For Courier Service:
Los Alamos National Laboratory
Technology Transfer Division
Bikini Atoll Road, Bldg. SM-30
Los Alamos, NM 87545
Attention: License Compliance Officer

For payments due the University:
Los Alamos National Laboratory
Technology Transfer Division
P.O. Box 462
Los Alamos, NM 87544
Attention: License Compliance Officer

16. FORCE MAJEURE

16.1 Neither Party is responsible for delay or failure in performance of any of the obligations imposed by this License Agreement if the failure is caused by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, court order or government interference, civil commotion, riot, war, or by any cause of like or unlike nature beyond the control and without fault or negligence of either Party.

17. EXPORT CONTROL LAWS

17.1 Licensee acknowledges and understands that the export of commodities and/or related technical data from the United States may require an export license from the Bureau of Export Administration, and that failure to obtain such export license may result in criminal liability under federal law. Failure of Licensee to comply with this requirement is a material breach of this Agreement for which the University has the right to terminate this Agreement pursuant to Paragraph 6.1

18. DISPUTE RESOLUTION

18.1 The individuals designated in Article 15 agree to exert their best efforts to resolve disputes arising from this License Agreement. In the event that any claim or controversy arising out of this License Agreement cannot be resolved by the aforestated individuals or their successors, such matter will immediately be referred jointly to the respective management of each Party who will meet and undertake to resolve the matter. In the event these individuals fail to resolve the matter within sixty (60) days of referral of the matter to them, either Party may give the other Party notice of its intention to seek other recourse.

19. GOVERNING LAW

19.1 THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, excluding any choice of law rules that would direct the application of the laws of another jurisdiction.

20. SURVIVAL

20.1 When this License Agreement expires or is terminated in accordance with the terms hereof, the following Articles will survive any expiration or termination:

Article 1	Definitions
Article 2	Grant
Article 3	License Fee
Article 6	Termination by the University
Article 7	Termination by the Licensee
Article 9	Use of Names, Tradenames and Trademarks
Article 10	Warranty and Disclaimer
Article 13	Assignment
Article 14	Indemnification
Article 18	Dispute Resolution
Article 20	Survival

21. GOVERNMENT APPROVAL OR REGISTRATION

21.1 If this License Agreement or any associated transaction is required by the law of any nation to be either approved, permitted or registered with any governmental agency, the Licensee will assume all legal obligations to do so. The Licensee will notify the University if the Licensee becomes aware that this License Agreement is subject to a U.S. or foreign government reporting, permitting, or approval requirement. The Licensee will make all necessary findings and pay all costs including fees, penalties and all other out-of-pocket costs associated with such reporting, permitting or approval process.

22. MISCELLANEOUS

22.1 The headings of the several sections of this License Agreement are included for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this License Agreement.

22.2 No amendment or modification of this License Agreement is binding on the Parties unless made in a writing that explicitly refers to this Agreement executed by duly authorized representatives of the Parties.

22.3 This License Agreement, with the attached Appendices, embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to this License Agreement.

22.4 In the event any one or more of the provisions of this License Agreement is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this License Agreement will be construed as if such invalid or illegal or unenforceable provisions had never been part of this License Agreement.

22.5 Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the Parties.

IN WITNESS WHEREOF, both the University and the Licensee have executed this License Agreement, in duplicate originals, by their respective officers on the day and year hereinafter written.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

By: /s/ DUNCAN W. MCBRANCH

Duncan W. McBranch
Director, Technology Transfer Division

Date: 9/8/05

Name of LICENSEE:

By: /s/ CHRIS A. RAANES

Printed Name: Chris A. Raanes

Title: Chief Operating Officer

Date: 09 Sept 2005

/s/ Darren J. Milliken 9/9/05
Darren J. Milliken
General Counsel

APPENDIX A

LICENSED SOFTWARE

PARMELA, Version 3.1, provided in executable form only, as disclosed in 2000

University's identification number. C-00,124

APPENDIX B

FEES

1. Fees

a. A non-refundable License Issue Fee of [*] U.S. Dollars ($[*]) for use at Authorized Site, which is due and payable upon execution of this License Agreement.

b. For each additional Authorized User, a nonrefundable User Fee of [*] U.S. Dollars will be paid to the University. This amount will be paid to the University prior to the University providing access to any additional Authorized Users.

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

APPENDIX C

AUTHORIZED SITE(S)

In accordance with Paragraph 1.3 of this Agreement, the following information identifies the location and custodian information for the LICENSED SOFTWARE for which the University has granted rights herein:

Shorebird Facility
1383 Shorebird Way
Mountain View, CA 94043

Custodian: Mike Hernandez
Phone: (408)716-4799
FAX: (650)969-6579

Or

1310 Orleans Drive
Sunnyvale, CA 94089

Custodian: Mike Hernandez
Phone: (408)716-4799
FAX: (650)969-6579

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.19

LICENSE AGREEMENT

Effective as of July 9th, 1997 ("Effective Date"), THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California ("STANFORD"), and, ACCURAY INCORPORATED, a California corporation having a principal place of business at 570 Del Rey Avenue, Sunnyvale, California 94086 ("LICENSEE"), hereby agree as follows:

1. BACKGROUND

1.1 STANFORD has an assignment of certain proprietary imaging software ("Invention[s]"), as described in Stanford Docket S93-188 and S95-124 and any Licensed Patent(s), as hereinafter defined, which may issue to such Invention(s).

1.2 STANFORD has certain technical data, software and information as herein defined ("Technology") pertaining to such Invention(s).

1.3 STANFORD desires to have the Technology and Invention(s) perfected and marketed at the earliest possible time in order that products resulting therefrom may be available for public use and benefit.

1.4 LICENSEE desires a license under said Technology, Invention(s) and Licensed Patent(s) to develop, manufacture, use and sell Licensed Product(s) in the field of use of treatment planning for radiosurgery and high-speed inter-modality image registration via iterative feature matching.

2. DEFINITIONS

2.1 "Licensed Patent(s)" means any Letters Patent issued upon STANFORD's patent applications serial numbered 188,436 and 21,588 filed one January 28th, 1994 and July 11th, 1996, respectively including both US and foreign patent applications and/or any divisions, continuations or reissuances thereof.

2.2 "Technology" means existing technical data, software and information, including, but not limited to, source code, binary files or the information contained in the Patent Application pertaining to the Invention(s) and provided to the LICENSEE whether or not it is of a confidential nature.

2.3 "Licensed Product(s)" means any product or part thereof in the Licensed Field of Use, the manufacture, use, or sale of which:

(a) Is covered by a valid claim of an issued, unexpired Licensed Patent(s) directed to the Invention(s). A claim of an issued, unexpired Licensed Patent(s) shall be presumed to be valid unless and until it has been held to be invalid by a final judgment of a court of competent jurisdiction from which no appeal can be or is taken;

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

(b) Is covered by any claim being prosecuted in a pending application directed to the Invention(s); or

(c) Incorporates any of the Technology.

2.4 "Licensed Field of Use" means all purposes related or pertaining to treatment planning for radio surgery and high-speed inter-modality image registration via iterative feature matching.

2.5 "Licensed Territory" means all geographic and political areas of the universe without limitation.

3. GRANT

3.1 STANFORD hereby grants and LICENSEE hereby accepts a license in the Licensed Field of Use to make, use and sell Licensed Product(s) in the Licensed Territory.

3.2 Said license is nonexclusive and survives until expiration of the last to expire of Licensed Patent(s).

3.3 STANFORD shall have the right to practice the Invention(s) and use the Technology for itself or in collaboration with third party academic or not-for-profit research institutions. STANFORD shall have the right to publish any information included in Technology and Licensed Patent(s).

4. DILIGENCE

4.1 As an inducement to STANFORD to enter into this Agreement, LICENSEE agrees to use all reasonable efforts and diligence to proceed with the development, manufacture and sale or lease of Licensed Product(s) and to diligently develop markets for the Licensed Product(s). Unless LICENSEE has sold a Licensed Product(s) within twelve (12) months of the license effective date, LICENSEE agrees that STANFORD may terminate this Agreement. STANFORD may also terminate this Agreement in the event that LICENSEE has not sold any Licensed Product for a continuous period of one (1) year.

5. ROYALTIES

5.1 LICENSEE agrees to pay to STANFORD a non-creditable, non-refundable license issue royalty of [*] dollars ($[*]) payable in two (2) installments as follows:

(a) [*] dollars ($[*]) upon the execution hereof the receipt of which is hereby acknowledged; and

(b) [*] dollars ($[*]) upon the completion of the sale of three (3) Licensed Products.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

5.2 Beginning on July 1st, 1998, and each year thereafter, LICENSEE shall pay to STANFORD a yearly minimum royalty of [*] dollars ($[*]). Said yearly royalty payments are non-refundable and creditable against earned royalties to the extent provided in Paragraph 5.4 hereof.

5.3 In addition, LICENSEE shall pay STANFORD earned royalties as follows:

(a) [*] dollars ($[*]) for each Licensed Product sold which utilizes any patent, software or technology arising from Stanford docket S93-188; and

(b) [*] dollars ($[*]) for each Licensed Product sold which utilizes any patent, software or technology arising from Stanford docket S95-124; or, alternatively,

(c) [*] dollars ($[*]) for each Licensed Product sold which utilizes any patent, software or technology, or any combination thereof, arising from both Stanford dockets S93-188 and S95-124.

5.4 Creditable payments under this Agreement shall be an offset to LICENSEE against each earned royalty payment which LICENSEE would be required to pay pursuant to Paragraph 5.3 hereof until the entire credit is exhausted.

5.5 If this Agreement is not terminated in accordance with other provisions hereof, LICENSEE's obligation to pay royalties hereunder shall continue for so long as LICENSEE, by its activities would, but for the license granted herein, infringe a valid claim of an unexpired Licensed Patent(s) of STANFORD covering said activity.

5.6 The royalty on sales in currencies other than U.S. Dollars shall be calculated using the appropriate foreign exchange rate for such currency quoted by the Bank of America (San Francisco) foreign exchange desk, on the close of business on the last banking day of each calendar quarter. Royalty payments due unto STANFORD shall be paid in U.S. Dollars. All non-U.S. taxes related to royalty payments shall be paid by LICENSEE and are not deductible from the payments due STANFORD.

6. ROYALTY REPORTS, PAYMENTS AND ACCOUNTING

6.1 Beginning with the first sale of a Licensed Product(s), LICENSEE shall make written reports (even if there are no sales) and earned royalty payments to STANFORD within thirty (30) calendar days after the end of each calendar quarter. This report shall state the number, description and aggregate unit sales of Licensed Product(s) during such completed calendar quarter and resulting calculation pursuant to Paragraph 5.3 hereof of all earned royalty payments due unto STANFORD for such completed calendar quarter. Concurrent with the making of each such report, LICENSEE shall include therewith payment in full of all such royalties due unto STANFORD for the calendar quarter covered by such report.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

6.2 LICENSEE agrees to keep and maintain records for a period of three (3) years showing the manufacture, sale, use and other disposition of products sold or otherwise disposed of under the license herein granted. Such records will include general ledger records showing cash receipts and expenses, and records which include production records, customers, serial numbers and related information in sufficient detail to enable the royalties payable hereunder by LICENSEE to be determined. LICENSEE further agrees to permit its books and records to be examined by STANFORD from time to time to the extent necessary to verify reports provided for in Paragraph 6.1 hereof. Such examination shall be made by STANFORD or its designee, at the expense of STANFORD, except in the event that the results of the audit reveal an under reporting of royalties due STANFORD of five percent (5%) or more, then the audit costs shall be paid by LICENSEE.

7. NEGATION OF WARRANTIES

7.1 Nothing in this Agreement is or shall be construed as:

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

(b) A warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents, copyrights, and other rights of third parties;

(c) An obligation to bring or prosecute actions or suits against third parties for infringement, except to the extent and in the circumstances described in Article 12;

(d) Granting by implication, estoppel, or otherwise any licenses or rights under patents or other rights of STANFORD or other persons other than Licensed Patent(s), regardless of whether such patents or other rights are dominant or subordinate to any Licensed Patent(s); or

(e) An obligation to furnish any technology or technological information other than the Technology.

7.2 Except as expressly set forth in this Agreement, STANFORD MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PRODUCT(S) WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

8. INDEMNITY

8.1 LICENSEE agrees to indemnify, hold harmless and defend STANFORD and Stanford Health Services and their respective trustees, officers, employees, students and agents against any and all claims for death, illness, personal injury, property damage and improper business practices arising out of the manufacture, use, sale or other disposition of Invention(s), Licensed Patent(s), Licensed Product(s) or Technology by LICENSEE or its customers.

8.2 STANFORD shall not be liable for any indirect, special, consequential or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract or otherwise. STANFORD shall not have any responsibilities or liabilities whatsoever with respect to Licensed Products(s).

8.3 LICENSEE shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

8.4 In addition to the foregoing, LICENSEE shall maintain, during the term of this Agreement, Comprehensive General Liability Insurance, including Products Liability Insurance, with reputable and financially secure insurance carrier(s) to cover the activities of LICENSEE. Such insurance shall provide minimum limits of liability of five million dollars ($5,000,000) and shall include STANFORD, Stanford Health Services, their trustees, directors, officers, employees, students and agents as additional insureds. Such insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the expiration of this Agreement. At STANFORD's request, LICENSEE shall furnish a Certificate of Insurance evidencing primary coverage and requiring thirty (30) calendar days prior written notice of cancellation or material change to STANFORD. LICENSEE shall advise STANFORD, in writing, that it maintains excess liability coverage (following form) over primary insurance for at least the minimum limits set forth above. All such insurance of LICENSEE shall be primary coverage; insurance of STANFORD or Stanford Health Services shall be excess and noncontributory.

9. MARKING

9.1 Prior to the issuance of patents on the Invention(s), LICENSEE agrees to mark Licensed Products (or their containers or labels) made, sold or otherwise disposed of by it under the license granted in this Agreement with the words "Patent Pending," and following the issuance of one or more patents, with the numbers of the Licensed Patent(s).

10. STANFORD NAMES AND MARKS

10.1 LICENSEE agrees not to identify STANFORD in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any STANFORD faculty member (excepting only John R. Adler, Jr., M.D.), employee or student or any trademark, service mark, trade name or symbol of STANFORD or of the Stanford Health Services, or that is associated with either of them, without STANFORD's prior written consent

11. INFRINGEMENT BY OTHERS: PROTECTION OF PATENTS

11.1 LICENSEE shall promptly inform STANFORD of any suspected infringement of any Licensed Patent(s) by a third party.

11.2 In the event that STANFORD and LICENSEE agree to jointly institute an action for infringement of the Licensed Patent(s) against such third party, the suit shall be brought in both their names, the out-of-pocket costs thereof shall be borne equally and any recovery or settlement shall be shared equally. LICENSEE and STANFORD shall agree to the manner in which they shall exercise control over such action. STANFORD may, at its sole discretion, also be represented by separate counsel of its own selection, the fees for which counsel shall be paid by STANFORD.

11.3 In the absence of an agreement to institute a suit jointly, STANFORD may institute suit, and, at its option, join LICENSEE as a plaintiff. If STANFORD decides to institute suit, then it shall notify LICENSEE in writing. LICENSEE's failure to notify STANFORD in writing, within fifteen (15) calendar days after the date of the notice, that it will join in enforcing the patent pursuant to the provisions hereof, shall be deemed conclusively to be LICENSEE's assignment to STANFORD of all rights, causes of action and damages resulting from any such

alleged infringement. STANFORD shall bear the entire cost of such litigation and shall be entitled to retain the entire amount of any recovery or settlement.

11.4 In the absence of an agreement to institute a suit jointly and if STANFORD notifies LICENSEE that it has decided not to join in or institute a suit, as provided in Paragraphs 11.2 or 11.3 hereinabove, LICENSEE may institute suit and, at its option, join STANFORD as a plaintiff. LICENSEE shall bear the entire cost of such litigation and shall be entitled to retain the entire amount of any recovery or settlement.

11.5 Should either STANFORD or LICENSEE commence a suit under the provisions of Paragraphs 11.2, 11.3 or 11.4 hereof and thereafter elect to abandon the same, it shall give timely notice to the other party who may, at its sole discretion, continue prosecution of such suit, provided, however, that the sharing of expenses and any recovery in such suit shall be as agreed upon between STANFORD and LICENSEE.

12. TERMINATION

12.1 LICENSEE may terminate this Agreement by giving STANFORD notice in writing at least thirty (30) calendar days in advance of the effective date of termination selected by LICENSEE.

12.2 STANFORD may terminate this Agreement if LICENSEE:

(a) Is in default in payment of royalty or providing of reports;

(b) Is in breach of any provision hereof; or

(c) Provides any false report;

and LICENSEE fails to remedy any such default, breach, or false report within thirty (30) calendar days after written notice thereof by STANFORD.

12.3 Surviving any termination hereof are:

(a) LICENSEE's obligation to pay royalties accrued or accruable;

(b) Any cause of action or claim of LICENSEE or STANFORD, accrued or to accrue, because of any breach or default by the other party; and

(c) The provisions of Articles 8, 9 and 10.

13. ASSIGNMENT

13.1 This Agreement may not be assigned without the written permission of STANFORD, except upon the sale or merger of essentially all of the assets of LICENSEE to a third party.

14. ARBITRATION

14.1 Any controversy arising under or related to this Agreement, and any disputed claim by either party against the other under this Agreement excluding any dispute relating to patent validity or infringement arising under this Agreement, shall be settled by arbitration in accordance with the Licensing Agreement Arbitration Rules of the American Arbitration Association.

14.2 Upon request by either party, arbitration will be by a third party arbitrator mutually agreed upon in writing by LICENSEE and STANFORD within thirty (30) calendar days of such arbitration request Judgement upon the award rendered by the arbitrator shall be final and non-appealable and may be entered in any court having jurisdiction thereof.

14.3 The parties shall be entitled to discovery in like manner as if the arbitration were a civil suit in the California Superior Court. The Arbitrator may limit the scope, time and/or issues involved in discovery.

14.4 Any arbitration shall be held at Stanford, California, unless the parties hereto mutually agree in writing to another place.

15. NOTICES

15.1 All notices under this Agreement shall be deemed to have been fully given when done in writing and deposited in the United States mail, registered or certified, and addressed as follows:

If to STANFORD, at Office of Technology Licensing, Stanford University, 900 Welch Road, Suite 350, Palo Alto, CA 94304-1850;

If to LICENSEE, at Accuray Incorporated, 570 Del Rey Avenue, Sunnyvale, CA 94086.

Either party may change its address upon written notice to the other party.

16. WAIVER

16.1 None of the terms of this Agreement can be waived except by the written consent of the party waiving compliance.

17. APPLICABLE LAW

17.1 This Agreement shall be governed by the laws of the State of California applicable to agreements negotiated, executed and performed wholly within California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

/s/ KATHARINE KU	DATE:	July 17, 1997

THE BOARD OF TRUSTEES OF
THE LELAND STANFORD JUNIOR UNIVERSITY
by Katharine Ku
Director of Technology Licensing

/s/ JAMES R. DOTY	DATE:	July 18, 1997

ACCUAY INCORPORATED
by James R. Doty, M.D.
Chairman and Chief Executive Officer

QuickLinks

LICENSE AGREEMENT

Exhibit 10.20

MANUFACTURING LICENSE

AND TECHNOLOGY TRANSFER AGREEMENT

January 28, 1991

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

MANUFACTURING LICENSE AND TECHNOLOGY TRANSFER AGREEMENT

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MANUFACTURING LICENSE AND TECHNOLOGY TRANSFER AGREEMENT

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

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

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

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

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

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

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

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

1. *Definitions.* As used herein:

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

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

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

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

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

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

United States or foreign patent or other intellectual property rights obtained from any of said United States or foreign patent applications.

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

(h) *Licensed Rights.* The term "Licensed Rights" shall mean the Company's Licensed Know-How, Licensed Patents and Licensed Copyrights.

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

2. *License Grant.*

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

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

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

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

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

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

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

(e) *Six (6) Months Notice*. Six (6) months after Licensee delivers written notice to the Company that it intends to exercise its right to manufacture (or have manufactured) the Licensed Product; provided, that in such event the Licensee shall purchase from the Company at its cost all

of the Company's remaining inventory related to the manufacture of the Licensed Products which is not useable by the Company in the manufacture of the Company's products for sale to customers other than the Licensee.

4. *Improvements.*

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

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

5. *Royalties.*

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

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

(c) *Records.* Licensee shall keep accurate records of the Royalty Bearing Products for a minimum of three (3) years from shipment in sufficient detail to enable the royalties payable to the Company to be determined accurately. To enable the Company from time to time to determine the accuracy of such records, Licensee shall permit an independent certified public accountant, acceptable to both parties, to inspect its pertinent records following reasonable notice and during reasonable business hours, not more frequently than annually. To protect Licensee's confidential business information, the report of such accountant to the Company shall be confined solely to statements regarding the accuracy of royalty payments made to the Company by Licensee. Except as specified below, such inspections shall be at the expense of the Company. If such inspection discloses an underpayment of more than 5%, Licensee shall reimburse the Company for the cost of such inspection and shall promptly pay the Company all previously unpaid amounts plus interest

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

thereon at the rate of eighteen percent (18%) per annum or the highest interest rate permitted by law, whichever is lower. The Company's inspection rights pursuant to this paragraph shall terminate two (2) years after the licenses granted under this Agreement become fully-paid and royalty-free.

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

6. *Duties of Company.*

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

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

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

7. *Rights Under Government Grants.*

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

(b) *Inclusion in Licensed Rights.* Any patent applications, copyrights, trade secrets or other intellectual property rights which result from the research and development under the SBIR Grant and/or the CCT Grant and which directly relate to the manufacture of the Licensed Products shall be included in the definition of Licensed Rights.

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

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

9. *Indemnification.*

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

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

10. *Representations and Warranties.*

(a) *Authority.* Each party represents and warrants that: (i) it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement and (ii) this Agreement is a valid and binding obligation of such party, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other

laws of general application relating to or affecting enforcement of creditors' rights and rules or laws concerning equitable remedies.

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

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

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

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

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

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

13. *Termination.*

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

(i) A material default by Licensee under any provision of this Agreement; or

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

(iii) Cessation of all or substantially all of its Licensee's business operations at any time after July 1, 1991, unless such operations are continued by a successor or assign under subparagraph 19(f) ("Assignment") below; or

(iv) The eighth anniversary of the date hereof if the Licensee has not exercised its rights under Paragraph 2 hereof ("License Grant") prior to such date.

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

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

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

(e) *The Company's Remedy Upon Termination.* Upon the Company's termination of this Agreement, Licensee shall immediately cease using the Licensed Rights and shall deliver a certificate to the Company by a duly authorized representative of Licensee stating that it no longer has any right to use the Licensed Rights of the Company or to manufacture or have manufactured the Licensed Product, and that the original and all copies of any information furnished by the Company hereunder have either been destroyed or returned to the Company; provided, however, that Licensee shall have the right to dispose of its inventory of the Licensed Product manufactured prior to the effective date of termination conditioned upon payment of the royalties set forth in Paragraph 5 ("Royalties") hereof. Licensee shall have the right to continue to lease Licensed Products which were being leased to customers at the time of termination.

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

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

15. *Arbitration.*

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

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

16. *Escrow of Documentation.* The Company agrees to place in escrow (the "Escrow") with an independent third party escrow agent reasonably acceptable to the Licensee (the "Escrow Agent") within ninety (90) days of the date on which the Licensee obtains financing in the amount of at least $[*], one copy of the Documentation as it exists on that date. After the Company has delivered the first Initial Unit (as defined in the Purchase Agreement), the Documentation in the Escrow shall be revised or replaced to reflect the as built design requirements of the technology to be provided to the Licensee. In addition, the Company agrees to update the Documentation contained in the Escrow to reflect any Improvements and other modifications to the Licensed Product once each calendar year until the Exercise Date. The agreement between the Company, the Licensee and the Escrow Agent shall provide for the release of the Documentation at the request of the Licensee at any time on or after the date on which the Company is required to deliver the Documentation in accordance with subparagraph 6(a) ("Delivery of Documentation") of this Agreement. All costs and expenses related to establishing and maintaining the Escrow shall be borne by the Licensee.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

17. *Patent Protection.*

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

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

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

18. *Confidential Information.*

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

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

(ii) is in the receiving party's possession prior to disclosure by the disclosing party as can be shown by the receiving party's files and records immediately prior to disclosure;

(iii) is approved for release by written authorization of the disclosing party;

(iv) is required to be disclosed by law or competent governmental authority;

(v) is in the receiving party's possession as a result of disclosure by a third party who did not violate any restrictions on disclosure in connection therewith; or

(vi) is independently developed by the disclosing party without any reliance on the Confidential Information of the other party, as can be shown by the disclosing party's files and records immediately prior to the disclosure.

(b) *Nondisclosure Obligations.* Each party agrees to protect the confidentiality of all Confidential Information of the other party, and to take all reasonable steps to prevent unauthorized disclosure or use of the Confidential Information of the other party and to prevent it from falling into the public domain or the possession of unauthorized persons. Each party agrees not to disclose any Confidential Information of the other party to third parties (other than as expressly provided herein or in the Purchase Agreement), and to disclose to its employees, contractors, consultants or sublicensees only such Confidential Information of the other party as is

necessary to each person's responsibilities in performing pursuant to the provisions of this Agreement or the Purchase Agreement, and then only if such person is bound by a confidentiality agreement containing terms substantially similar to those contained in this Section 18 ("Confidential Information"). Each party shall promptly advise the other party of any misappropriation or misuse by any person of any Confidential Information of such other party.

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

19. *General Provisions.*

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

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

Notices to the Company shall be addressed as follows:

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

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

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

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

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

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

assignment, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties.

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

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

(i) *Independent Contractor.* The relationship between the Company and Licensee shall be that of independent contractors. Nothing contained herein shall be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party shall have the rights, power or authority to create any obligation, express or implied, on behalf of the other.

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

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

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

COMPANY:	LICENSEE:
SCHONBERG RADIATION CORPORATION	ACCURAY ASSOCIATES By: Accuray Incorporated, General Partner
By: /s/ RUSSELL G. SCHONBERG	By: /s/ JOSEPH G. DEPP
(Authorized signatory)	(authorized Signatory)
Printed Name: Russell G. Schonberg	Printed Name: Joseph G. Depp
Title: CEO	Title: President
Date: 1/30/91	Date: 1/30/91

EXHIBIT 1
LICENSED PRODUCT

The Licensed Product will consist of:

1. A 4 MeV standing-wave X-Band linear accelerator, with appropriate rf power source, modulator, and supporting electronics.

2. A primary collimator to restrict the radiation field to a maximum of 60 mm diameter at the treatment distance.

3. A dual dosimetry ion chamber system which will monitor the radiation exposure and terminate the exposure upon delivering a predetermined amount of radiation.

4. A set of secondary collimators providing circular field sizes, ranging from 5 mm to 35 mm in diameter.

5. A control system which can be interfaced to the Neurotron 1000 control system.

AMENDMENT

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

The agreements between the parties which are amended hereby are:

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

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

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

RECITALS

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

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

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

AGREEMENT

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

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

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

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

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

2. License Grant

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

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

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

5. Royalties.

(a) Amount of Payment. Licensee shall pay to the Company a royalty of $[*] for each Licensed Product manufactured by Licensee, the Company, or by a third party on Licensee's behalf, after 1 April 1996 which is sold or otherwise distributed (a "Royalty Bearing Product") until such time as the Maximum Royalty Amount ($[*]) has been paid to the Company under this Agreement; provided, however, that the Maximum Royalty Amount shall be reduced by the full amount of any research and development costs which are paid for by Licensee under the terms of the Purchase Agreement in connection with the delivery of the Initial Units (as defined in the Purchase Agreement). Upon payment in full of the Maximum Royalty Amount as so reduced, the licenses granted under this Agreement shall become fully-paid and royalty-free.

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

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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

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

As of	Cumulative Royalty
March 31, 1997	$ [*]
June 30, 1997	$ [*]
September 30, 1997	$ [*]
December 31, 1997	$ [*]
March 31, 1998	$ [*]
June 30, 1998	$ [*]
September 30, 1998	$ [*]
December 31, 1998	$ [*]
March 31, 1999	$ [*]
June 30, 1999(6)	$ [*]
September 30, 1999	$ [*]
December 31, 1999	$ [*]
March 31, 2000	$ [*]
June 30, 2000	$ [*]
September 30, 2000	$ [*]
December 31, 2000	$ [*]
March 31, 2001	$ [*]
June 30, 2001	$ [*]
September 30, 2001	$ [*]
December 31, 2001	$ [*]

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

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

Accuray Incorporated
570 Del Rey Avenue
Sunnyvale, CA 94087

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

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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

EXHIBIT 1/EXHIBIT A
LICENSED PRODUCT/PRODUCT

The Licensed Product/Product will consist of:

1. A 6 MeV standing-wave X-band linear accelerator, with appropriate rf power source, modulator, and supporting electronics.

2. A primary collimator to restrict the radiation field to a maximum of 60 mm diameter at the treatment distance.

3. A dual dosimetry ion chamber system which will monitor the radiation exposure and terminate the exposure upon delivering a predetermined amount of radiation.

4. A control system which can be interfaced to the Neurotron 1000 control system.

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

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

Attest:

/s/ [SIGNATURE ILLEGIBLE]

SCHONBERG RESEARCH CORPORATION

By: /s/ BRUCE G. SCHONBERG

Attest:

/s/ BRUCE BOWDEN

Secretary

ACCURAY INCORPORATED

By: /s/ DONALD CADDES

President

11 November 2002

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

Dear Russ:

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

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

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

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

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

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

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

5. *Royalties*

(a) Amount of Payment. For each Licensed Product manufactured by Licensee, the Company, or by a third party on Licensee's behalf which is sold or otherwise distributed (a "Royalty Bearing Product") after 1 April 1996, Licensee shall pay to the Company $[*], except that beginning 1 October 2002 the payment for the first such Royalty Bearing Product each calendar quarter shall be $[*], until such time as the Maximum Royalty Amount ($[*]) has been paid to the Company under this License; provided, however, that the Maximum Royalty Amount shall be reduced by the full amount of any research and development costs which are paid for by licensee under the terms of the Purchase Agreement in connection with the delivery of the Initial Units (as defined in the Purchase Agreement). Upon payment in full of the Maximum Royalty Amount as so reduced, the licenses granted under this License shall become fully-paid and royalty-free.

Sincerely,
Accuray Incorporated

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

AGREED:

Schonberg Research Corporation

/s/ Russell G. Schonberg
Russell G. Schonberg
CEO

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

QuickLinks

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Exhibit 10.22

CONSULTING AGREEMENT

This Consulting Agreement ("***Agreement***") is made as of March 11, 2004 ("***Effective Date***"), by and between Accuray, a _____ corporation having its principal place of business at 1310 Chesapeake Terrace, Sunnyvale, CA 94089 ("***Company***"), and Forte Automation Systems, Inc., a corporation, whose address is 8155 Burden Road, Rockford, IL 61115 ("***Consultant***").

Company desires to have Consultant perform consulting services for Company and Consultant desires to perform such services for Company, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. SERVICES.

1.1 STATEMENTS OF WORK. From time to time, Company and Consultant may execute statements of work, substantially in the form attached hereto as EXHIBIT A, that describe the specific services to be performed by Consultant, including any work product to be delivered by Consultant (as executed by the parties, a "***Statement of Work***"). Each Statement of Work will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein.

1.2 PERFORMANCE OF SERVICES. Consultant will perform the consulting services specified in each Statement of Work ("***Services***") in accordance with the terms and conditions of this Agreement and of each Statement of Work.

1.3 PAYMENT. Company will pay Consultant fees in accordance with the terms set forth in each Statement of Work. If the Statement of Work requires Consultant to complete certain milestones, Company's payment obligation will be expressly subject to Consultant's completion of such milestones to Company's reasonable satisfaction. Unless otherwise specified in the Statement of Work, Company will not reimburse Consultant for any expenses incurred by Consultant in connection with performing Services. Subject to the foregoing, Company will pay each invoice submitted by Consultant within thirty (30) days following receipt thereof.

2. RELATIONSHIP OF PARTIES.

2.1 INDEPENDENT CONTRACTOR. Consultant is an independent contractor and is not an agent or employee of, and has no authority to bind, Company by contract or otherwise. Consultant will perform the Services under the general direction of Company, but Consultant will determine, in Consultant's sole discretion, the manner and means by which the Services are accomplished, subject to the requirement that Consultant will at all times comply with applicable law. Company has no right or authority to control the manner or means by which the Services are accomplished.

2.2 EMPLOYMENT TAXES AND BENEFITS. Consultant will report as self-employment income all compensation received by Consultant pursuant to this Agreement. Consultant will indemnify Company and hold it harmless from and against all claims, damages, losses, costs and expenses, including reasonable fees and expenses of attorneys and other professionals, relating to any obligation imposed by law on Company to pay any withholding taxes, social security, unemployment or disability insurance, or similar items in connection with compensation received by Consultant pursuant to this Agreement. Consultant will not be entitled to receive any vacation or illness payments or to participate in any plans, arrangements, or distributions by Company pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for Company's employees.

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

2.3 LIABILITY INSURANCE. Consultant will maintain adequate insurance to protect Consultant from the following: (i) claims under workers' compensation and state disability acts; (ii) claims for damages because of bodily injury, sickness, disease or death that arise out of any negligent act or omission of Consultant; and (iii) claims for damages because of injury to or destruction of tangible or intangible property, including loss of use resulting therefrom, that arise out of any negligent act or omission of Consultant.

3. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.

3.1 DEFINITION OF INNOVATIONS. Consultant agrees to disclose in writing to Company all inventions, products, designs, drawings, notes, documents, information, documentation, improvements, works of authorship, processes, techniques, know-how, algorithms, technical and business plans, specifications, hardware, circuits, computer languages, computer programs, databases, user interfaces, encoding techniques, and other materials or innovations of any kind that Consultant may make, conceive, develop or reduce to practice, alone or jointly with others, in connection with performing Services or that result from or that are related to such Services, whether or not they are eligible for patent, copyright, mask work, trade secret, trademark or other legal protection (collectively, "***Innovations***").

3.2 OWNERSHIP OF INNOVATIONS. Consultant and Company agree that, to the fullest extent legally possible, all Innovations will be works made for hire owned exclusively by Company. Consultant agrees that, regardless of whether the Innovations are legally works made for hire, all Innovations will be the sole and exclusive property of Company. Consultant hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, all right, title and interest in and to the Innovations, including all worldwide patent rights (including patent applications and disclosures), copyright rights, mask work rights, trade secret rights, know-how, and any and all other intellectual property or proprietary rights (collectively, "***Intellectual Property Rights***") therein. At Company's request and expense, during and after the term of this Agreement, Consultant will assist and cooperate with Company in all respects and will execute documents, and, subject to the reasonable availability of Consultant, give testimony and take such further acts reasonably requested by Company to enable Company to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Innovations. Consultant hereby appoints the officers of Company as Consultant's attorney-in-fact to execute documents on behalf of Consultant for this limited purpose.

3.3 MORAL RIGHTS. Consultant also hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, and waives and agrees never to assert, any and all Moral Rights (as definers below) that Consultant may have in or with respect to any Innovation, during and after the term of this Agreement. "***Moral Rights***" mean any rights to claim authorship of any Innovation, to object to or prevent the modification or destruction of any Innovation, to withdraw from circulation or control the publication or distribution of any Innovation, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a "moral right."

3.4 RELATED RIGHTS. To the extent that Consultant owns or controls (presently or in the future) any patent rights, copyright rights, mask work rights, trade secret rights, or any other intellectual property or proprietary rights that block or interfere with the rights assigned to Company under this Agreement (collectively, "***Related Rights***"), Consultant hereby grants or will cause to be granted to Company a non-exclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license (with the right to sublicense) to make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based upon, distribute, sublicense, display, perform and transmit any products, software, hardware, methods or materials of any kind that are covered by

such Related Rights, to the extent necessary to enable Company to exercise all of the rights assigned to Company under this Agreement.

4. CONFIDENTIAL INFORMATION. For purposes of this Agreement, "***Confidential Information***" means and will include: (i) any information, materials or knowledge regarding Company and its business, financial condition, products, programming techniques, customers, suppliers, technology or research and development that is disclosed to Consultant or to which Consultant has access in connection with performing Services; (ii) the Innovations; and (iii) the existence and terms and conditions of this Agreement Confidential Information will not include, however, any information that is or becomes part of the public domain through no fault of Consultant or that Company regularly gives to third parties without restrictions on use or disclosure. Consultant agrees to hold all Confidential Information in strict confidence, not to use it in any way, commercially or otherwise, except in performing the Services, and not to disclose it to others. Consultant further agrees to take all action reasonably necessary to protect the confidentiality of all Confidential Information including, without limitation, implementing and enforcing procedures to minimize the possibility of unauthorized use or disclosure of Confidential Information.

5. WARRANTIES.

5.1 COMPETITIVE ACTIVITIES. During the term of this Agreement, Consultant will not, directly or indirectly, in any individual or representative capacity, engage or participate in or provide services to any business that is competitive with the types and kinds of business being conducted by Company.

5.2 PRE-EXISTING OBLIGATIONS. Consultant represents and warrants that Consultant has no pre-existing obligations or commitments (and will not assume or otherwise undertake any obligations or commitments) that would be in conflict or inconsistent with, or that would hinder Consultant's performance of its obligations under this Agreement.

5.3 SOLICITATION OF SERVICES. Because of the trade secret subject matter of Company's business, Consultant agrees that, dining the term of this Agreement and for a period of one (1) year thereafter, it will not solicit the services of any of Company's employees, consultants, suppliers or customers for Consultant's own benefit or for the benefit of any other person or entity.

6. INDEMNIFICATION. Consultant will indemnify and hold harmless Company from and against all claims, damages, losses and expenses, including court costs and reasonable attorneys' fees, arising out of or resulting from, and, at Company's option, Consultant will defend Company against:

(i) any action by a third party against Company that is based on a claim that any Services, the results of any Services (including any Innovations), or Company's use thereof, infringe, misappropriate or violate a third party's Intellectual Property Rights; and

(ii) any action by a third party against Company that is based on any negligent act or omission or willful conduct of Consultant and that results in: (a) bodily injury, sickness, disease or death; (b) injury or destruction to tangible or intangible property (including computer programs and data) or any loss of use resulting therefrom; or (c) the violation of any statute, ordinance, or regulation.

7. TERM AND TERMINATION.

7.1 TERM. This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, will remain in force and effect for as long as Consultant is performing Services pursuant to a Statement of Work.

7.2 TERMINATION FOR BREACH. Either party may terminate this Agreement (including all Statements of Work) if the other party breaches any material term of this Agreement and fails to cure such breach within ten (10) days following written notice thereof from the non-breaching party.

7.3 TERMINATION FOR CONVENIENCE. Company may immediately terminate this Agreement (including all Statements of Work) at any time, for any reason or no reason, by written notice to Consultant.

7.4 EFFECT OF TERMINATION.

(a) Upon the expiration or any termination of this Agreement for any reason, Consultant will promptly deliver to Company all Innovations, including all work in progress on any Innovations and all versions and portions thereof.

(b) Upon the expiration or any termination of this Agreement (except termination of this Agreement pursuant by Company pursuant to Section 7.2 for breach by Consultant), Company will pay Consultant any amounts that are due and payable under Section 1.2 for Services performed by Consultant prior to the effective date of expiration or termination.

(c) Upon the expiration or termination of this Agreement for any reason, Consultant will promptly notify Company of all Confidential Information in Consultant's possession or control and will promptly deliver all such Confidential Information to Company, at Consultant's expense and in accordance with Company's instructions.

7.5 SURVIVAL. The provisions of Sections 2.2, 3, 4, 5.3, 6, 7.4, 7.5, 8 and 9 will survive the expiration or termination of this Agreement.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF COMPANY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

9. GENERAL.

9.1 NO ELECTION OF REMEDIES. Except as expressly set forth in this Agreement, the exercise by Company of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or available at law or in equity.

9.2 ASSIGNMENT. Consultant may not assign or transfer any of Consultant's rights or delegate any of Consultant's obligations under this Agreement, in whole or in part, without Company's express prior written consent. Any attempted assignment, transfer or delegation, without such consent, will be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties permitted successors and assigns.

9.3 EQUITABLE REMEDIES. Because the Services are personal and unique and because Consultant will have access to Confidential Information of Company, Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief without having to post a bond or other consideration, in addition to all other remedies that Company may have for a breach of this Agreement.

9.4 ATTORNEYS' FEES. If any action is necessary to enforce the terms of this Agreement, the substantially prevailing party will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

9.5 GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

9.6 SEVERABILITY. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

9.7 NOTICES. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

9.8 ENTIRE AGREEMENT. This Agreement, together with all Statements of Work, constitutes the complete and exclusive understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. In the event of a conflict, the terms and conditions of each Statement of Work will take precedence over the terms and conditions of this Agreement. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

9.9 WAIVER. The waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same other provisions hereof.

9.10 COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

COMPANY:	**CONSULTANT:**
By: /s/ MIKE SARACEN	By: /s/ TOBY HENDERSON
Title: Dir. Product Management	Title: President
Date: March 11, 2005	Date: March 11, 2005

EXHIBIT A

Statement of Work

This Statement of Work is issued under and subject to all of the terms and conditions of the Consulting Agreement dated as of March 11, 2005 by and between Accuray ("***Company***") and Forte Automation Systems, Inc ("***Consultant***").

1. **Description of Services (see attached Proposal # 03-4984A, dated 7/28/03, as amended by attached Proposal # 04-5244, dated June 8, 2004).**

2. **Payment Terms [Include the following if the Consultant will be paid based on the completion of milestones] (see attached Proposal # 03-4984A, dated 7/28/03, as amended by attached Proposal # 04-5244, dated June 8, 2004).**

3. Other Terms

AGREED AS OF _____, 200__

COMPANY:

By:	/s/ MIKE SARACEN	By:	
Title:	Dir. Product Management	Title:	

Proposal # 03-4984-A
Date 07/28/03

ACCURAY, INC.
Patient Couch Application

Mr. Mike Saracen

FORTE
Automation Systems, Inc.

July 28, 2003

Mr. Mike Saracen
Accuray, Inc.
570 Del Rey Avenue
Sunnyvale, CA 94086

Dear Mr. Saracen:

Thank you for your interest in Forte Automation Systems, Inc. to supply equipment for your patient couch application. Forte has considerable experience building custom robotics and automation applications in the fields of pharmaceutical equipment and medical devices.

Based on the input from our last meeting, we have redesigned the patient couch to include the features your team has requested.

We wish to thank you for the opportunity to quote your requirements and look forward to working with you and your company on this project.

If you have any questions on this proposal, or require additional information, please do not hesitate to contact us.

Sincerely,

FORTE AUTOMATION SYSTEMS, INC

/s/ Toby Henderson

SCOPE:

Forte Automation Systems, Inc. will design and build a state of the art patient couch that will be integrated into your existing product.

At your request, we have provided this quotation in three (3) phases:

- System design.
- Prototype system.
- Build of multiple systems.

PROJECT OBJECTIVES:

- Increase system accuracy over existing product.
- Provide six-axis of interpolated motion to improve patient positioning.
- Utilize a Kuka controller for easy integration with your existing Kuka based product.
- Improve patient egress.
- Provide an esthetically pleasing compact package.
- Use off the shelf components to provide high reliability with low cost.
- Assure patient safety with axis limits and robust controls plan.
- Open new market opportunities.
- Improve throughput by improving patient load/unload efficiency.

SYSTEM DELIVERABLES:

Phase One:

Forte will provide mechanical designs to incorporate a variety of Forte standard servo mechanisms. The resulting package will yield a system with six-axis of freedom within the safety parameters that will be established during this phase.

The design will take in account to the existing product constraints with respect to floor space and interface to your existing product.

Controls specifications will be developed including electrical interface to your equipment, couch control, hardwire schematics, cabling drawings, and panel layouts.

All documentation for custom designed equipment will be provided in either 3D or 2D electronic CAD format.

Phase Two:

Forte will build a prototype patient couch and assist with the integration of the couch with your equipment. This phase will include the necessary mechanical hardware, control hardware, development of the system software, and testing of the fully assembled couch at Forte.

Three (3) days of training is included for up to four (4) people at our Rockford plant.

Integration with your equipment will be billed at our normal field service rates.

Phase Three:

Forte will provide multiple duplicate systems including any design improvements discovered in phase two.

Forte will be available to assist with installation training and service at your customer's site on request. Any non-warrantee service will be billed at our published service rates.

MISCELLANEOUS:

Electrical:

System Power Requirements estimated at 480 VAC, 60 Hz, 30 Amps.

DOCUMENTATION:

DESIGN APPROVAL: System design to be approved by Accuray, Inc. personnel prior to programming and manufacture.

All documentation will be kept to latest revision, custom software inclusive. Forte will provide all manuals for all systems. Operations manuals will include start-up, calibration and set-up procedures. Software and mechanical drawings will be supplied in an electronic file format as well as one (1) bound hardcopy.

Documentation will be written with recovery methods and written procedures easily understood by operational personnel.

Set-up and calibration will be described in detail (mechanical reference, fixtures, critical measurements, and variable interaction) in our manual.

All adjustments will be easily assessable. A preventive maintenance schedule and spare parts list (commercial and custom) with wear parts identified is part of the Forte standard documentation package.

One (1) documentation package is included. Additional copies of manuals can be purchased for $250.00 per copy.

SPECIFICATIONS:

- Payload 210 KG.
- Repeatability < ± .08 mm.
- Weight 1120 KG approximate.

MAINTENANCE/SET-UP & CALIBRATION FIXTURES:

Machine framework and major mechanicals will be designed for accessibility to internal components with clearance for removal of shafts, bearings, and slides. Critical alignment devices will be dowel pinned at a point that will effect assembly removal with minimal corruption of alignment and set-up.

Fixtures and calibration jigs will be designed and included to aid in set-up. Special attention will be made to methods of mechanical adjustment and variable structure to insure reliable and expedient set-up of devices. Set-up and calibration routines and procedures with logic and data maps is part of the standard documentation.

SYSTEM SUPPORT/INSTALLATION & START-UP:

Project Management / System Support:

Forte will assign a project engineer to your system, who will coordinate the project through concept, design, build, installation, and remain available to provide service or technical assistance after the system has been installed. During the build, Accuray, Inc. will have visitation rights at any time and will provide reasonable notice prior to arrival.

All agreements will be made in writing. Any correspondence on the project will be recorded and kept in a bound chronological book. Design changes and engineering change orders will be copied to Accuray, Inc. for concurrence and recorded.

Commencing upon bid award, a design kick-off meeting will be held and subsequent design reviews through the engineering/design process will be scheduled and attended by representatives of both companies.

Prior to or shortly after the design kick-off meeting, the project schedule will be established and any deviations will be brought to the attention of Accuray, Inc.

Installation & Start-Up:

Shipping, rigging, uncrating, and installation of basic services at your facility will be the responsibility of Accuray, Inc. Forte will provide these services, if requested by Accuray, Inc. at our standard field service rates.

Forte will supply appropriate mechanical engineering and control system engineering personnel for installation supervision, start-up, and training at our quoted service rate. Forte will notify Accuray, Inc. of facility requirements within 2 months of project ship date.

MACHINE ACCEPTANCE/DELIVERY:

Machine Acceptance:

Acceptance will be made by a run-off at Forte Automation Systems, Inc. facility, with personnel from Accuray, Inc. present.

A second run-off will be performed at Accuray, Inc. with the system integrated into your product.

Acceptance will be based on conformance to the build specifications established in phase one.

Project Schedule:

Phase one deliverables can be completed in 8 - 10 weeks ARO.

Phase two deliverables can be completed in 12 - 14 weeks ARO.

Delivery of duplicate systems would require 10 - 12 weeks ARO.

The project schedule will be reviewed at the time of order placement and is subject to change. The project schedule commences upon receipt of both a hard copy purchase order and down payment. At that time, a complete schedule will be provided. Necessary changes due to unforeseen circumstances will result in a change to the delivery schedule.

PRICING/TERMS:

Price:

One (1) Phase One Concept and Design as Described in Forte Proposal #03-4984-A, F.O.B. Rockford, IL	$	[*]
One (1) Phase Two Prototype Build as Described in Forte Proposal #03-4984-A, F.O.B. Rockford, IL	$	[*]
One (1) Phase Three Quantity Build Estimate as Described in Forte Proposal #03-4984-A, F.O.B. Rockford, IL	$	[*]/ea.
Installation Assistance, Start-Up and Training at Your Plant	$	[*] / Hr. / Person Plus Expenses

NOTE: Forte Automation Systems, Inc. Terms and Conditions and Warranty sheet is attached and an inseparable part of this proposal.

Payment Terms:

Payment to be made on a phase contract agreement as follows:

30% down payment with purchase order.
30% due upon approval of engineering.
30% due upon acceptance at Forte Automation Systems, Inc. facility.
10% due net 30, following acceptance at Accuray, Inc.'s facility.

NOTE: Lease options are also available.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Proposal # 04-5244
June 8, 2004

ACCURAY INC.
Prototype Robotic Patient Couch

Mr. Mike Saracen

Mr. Mike Saracen
Accuray Inc.
1310 Chesapeake Terrace
Sunnyvale, CA 94089

Dear Mike:

At your request, we have evaluated costs to construct a 2nd and 3rd Prototype Robotic Patient Couch.

Tests to be conducted over the next several weeks will determine if a seventh-axis will be required for the production systems. Pending these results, we have included seventh-axis pricing as an option.

We wish to thank you for the opportunity to quote your requirements and look forward to working with you and your company on this project.

If you have any questions on this proposal, or require additional information, please do not hesitate to contact us.

Sincerely,

FORTE AUTOMATION SYSTEMS, INC.

Toby Henderson

SCOPE:

Based on the input from our last review meeting, Forte will complete the following:

- Evaluate reduced motor sizes for all axis.
- Reduce width profile for axis one.
- Reduce folded height of link two by incorporating a smaller gearbox between axis one and two.
- Evaluate longer table possibilities.
- Redesign of the axis three casting.

SYSTEM DELIVERABLES:

Forte will provide:

- Kuka Robot Kit Bill of Material.
- Two (2) 2nd Generation Prototype Units.

MISCELLANEOUS:

Electrical:

System power requirements estimated at 208 VAC, 60 Hz, 30 Amps.

DOCUMENTATION:

DESIGN APPROVAL: System design to be approved by Accuray, Inc. personnel prior to programming and manufacture.

All documentation will be kept to latest revision, custom software inclusive. Forte will provide all manuals for all systems. Operations manuals will include start-up, calibration and set-up procedures.

Set-up and calibration will be described in detail (mechanical reference, fixtures, critical measurements, and variable interaction) in our manual.

All adjustments will be easily assessable. A preventive maintenance schedule and spare parts list (commercial and custom) with wear parts identified are part of the Forte standard documentation package.

One (1) documentation package is included. Additional copies of manuals can be purchased for $250.00 per copy.

SYSTEM SUPPORT/INSTALLATION & START-UP:

Project Management / System Support:

Forte will assign a project engineer to your system, who will coordinate the project through concept, design, build, installation, and remain available to provide service or technical assistance after the system has been installed. During the build, Accuray, Inc. will have visitation rights at any time and will provide reasonable notice prior arrival.

All agreements will be made in writing. Any correspondence on the project will be recorded and kept in a bound chronological book. Design changes and engineering change orders will be copied to Accuray, Inc. for concurrence and recorded.

Commencing upon bid award, a design kick-off meeting will be held and subsequent design reviews through the engineering/design process will be scheduled and attended by representatives of both companies.

Prior to or shortly after the design kick-off meeting, the project schedule will be established and any deviations will be brought to the attention of Accuray, Inc.

Installation & Start-Up:

Shipping, rigging, uncrating, and installation of basic services at your facility will be the responsibility of Accuray, Inc. Forte will provide these services, if requested by Accuray, Inc. at our standard field service rates.

Forte will supply appropriate mechanical engineering and control system engineering personnel for installation supervision, start-up, and training at our quoted service rate. Forte will notify Accuray, Inc. of facility requirements within 2 months of project ship date.

MACHINE ACCEPTANCE/DELIVERY:

Machine Acceptance:

Acceptance will be made by a run-off at Forte Automation Systems, Inc. facility, with personnel from Accuray, Inc. present.

A second run-off will be performed at Accuray, Inc. with the system integrated into your product.

Acceptance will be based on conformance to the build specifications.

Project Schedule:

As we discussed, some of the motor and possibly controller re-sizing may be difficult to accomplish in the allotted time. Both Accuray, Inc. and Forte must work closely with Kuka to assure the delivery of robot kits and support required to make these control changes.

Engineering = 3 weeks.

Build = 8 weeks.

The project schedule will be reviewed at the time of order placement and is subject to change. The project schedule commences upon receipt of both a hard copy purchase order and down payment. At that time, a complete schedule will be provided. Necessary changes due to unforeseen circumstances will result in a change to the delivery schedule.

PRICING/TERMS:

Price:

One (1) Engineering as Described in Forte Proposal #04-5244, F.O.B. Origin	$	[*]
Build Two (2) Six-Axis Units as Described in Forte Proposal #04-5244, F.O.B. Origin	$	[*]/Each
Build Two (2) Seventh-Axis Modules as Described in Forte Proposal #04-5244, F.O.B. Origin	$	[*]/Each
Installation Assistance, Start-Up and Training at Your Plant	$[*] / Hr. / Person Plus Expenses	

NOTE: Forte Automation Systems, Inc. Terms and Conditions and Warranty sheet is attached and an inseparable part of this proposal.

Payment Terms:

Payment to be made on a phase contract agreement as follows:

30% down payment with purchase order.
30% due upon approval of engineering.
30% due upon acceptance at Forte Automation Systems, Inc. facility.
10% due net 30, following acceptance at Accuray Inc.'s facility.

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

FORTE AUTOMATION SYSTEMS, INC. ("FORTE")
Terms, Conditions & Warranty

1. **Applicable Terms**. Any order resulting from this proposal will be subject to the written acknowledgment of Forte.

2. **Taxes**. Any taxes or additional costs, due to the federal, state or municipal legislation, to which the prices in this proposal are subject, will be by the purchaser.

3. **Duration**. The price set forth in the proposal is valid for 60 days.

4. **Delivery**. Forte will make every reasonable effort to meet the delivery period set forth on the proposal. Delivery period proposed is an estimate based on conditions on the date of the proposal and is subject to review and change per Forte's acknowledgment. All reference to delivery assumes the period to start on the date of Forte's acknowledgment of the Purchaser's formal written order, and all deliveries are contingent upon the timely performance of the purchaser in providing component parts/part samples, prints, and approvals as may be requested by Forte. Delivery shall be F.O.B. Forte's plant, Rockford, Illinois. Purchaser is deemed to have agreed to extend delivery date if delay is result of Purchaser's failure to provide in timely fashion component parts/part samples, prints, and approvals as may be requested by Forte.

5. **Delays**. Forte shall not be liable for any loss or damage for delay or non-delivery due to acts of civil or military authority, acts of the buyer, or by reason of "Force Majeur," which shall be deemed to mean all other causes not reasonably in the control of Forte, including but not limited to acts of God, war, strikes, labor disturbances, delays of carriers, inability to secure materials, labor or manufacture facilities. Any delay resulting from such causes shall extend corresponding shipping dates accordingly.

6. **Warranties and Remedies**. Goods are warranted, to the original purchaser for use, to be free of defects in material and workmanship within such tolerances as may be customary in the industry for a period of 90 days from the date of shipment. Forte, at its option, will repair or replace, or refund the purchase price of any machine or part which fails within the warranty period and is found upon examination by Forte to be defective in material or workmanship, or both. This warranty does not cover failures attributable to improper use or maintenance, exceeding rated capacity, alteration, accident, normal, wear of moving parts, or damages caused by shipment. Computer software, accessories, controls, hydraulics, and other components not manufactured by Forte are excluded from this warranty. For services on such parts, refer to applicable manufacturer's warranty. Purchaser must give written notice to Forte at the address shown below of any warranty claim within thirty days after failure, and if so instructed, return to Forte the parts to be replaced or repaired, with all transportation charges prepaid by purchaser. Replacement parts will be invoiced to purchaser, with credit issued for parts covered by this warranty and freight thereon. Removal and reinstallation of replacement parts shall be at purchaser's expense. **THERE IS NO OTHER EXPRESS WARRANTY, ANY AND ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS. FOR PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED BY FORTE. INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE EXPRESSLY EXCLUDED FROM THE REMEDIES AVAILABLE TO PURCHASER, AND THE REMEDIES PROVIDED IN THIS WARRANTY SHALL BE EXCLUSIVE.**

7. **Damages**. Forte shall not be liable under any circumstances for consequential damages arising in whole or in part from any breach by Forte, **AND ALL SUCH CONSEQUENTIAL DAMAGES ARE HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED BY FORTE.**

8. **Security Interest**. Until paid in full for the purchase price, Forte retains a security interest in all goods delivered to Purchaser, and the products and proceeds thereof, for the purpose of securing payment of any and all indebtedness of Purchaser to Forte arising out of the sale of the goods noted hereon, together with all costs and expenses in connection therewith, including, but not limited to, expenses of retaking, preserving, repairing, maintaining, preparing for sale, and selling said collateral as well as reasonable attorney's fees, court costs, and other legal expenses.

9. **Patent and Copyright Infringement Indemnification**. Forte shall indemnify, defend, and hold Purchaser harmless (including attorneys' fees) from any claim that the product delivered hereunder is infringing on any valid copyright or patent, provided that Purchaser gives Forte timely written notice of such claim. Forte shall not be responsible for any compromise made in connection with such a claim without its consent. In the event of a final judgment which prohibits Purchaser's continued use of any product by reason of infringement, or if at any time Forte is of the opinion that any product is likely to become the cause of action for infringement, Forte may, at its sole discretion and expense, obtain the rights to continued use of such product, replace or modify such product so that the product is no longer infringing, or remove the product involved and refund to Purchaser the price thereof as depreciated or amortized over a five (5) year life. In no event shall Forte's liability to Purchaser under this section exceed the amount paid by Purchaser to Forte for any allegedly infringing product. Purchaser shall indemnify, defend, and hold Forte harmless from any loss, cost, or expense (including attorneys' fees) arising: (1) in connection with any claim that the product is infringing on a copyright or patent because of the way the product was modified, altered, or combined with any equipment, device, or software not supplied by Forte or because the product was used in a manner for which the same was not designed; or because the goods manufactured were done so in accordance with Purchaser's specifications (or modified in any way by Purchaser); (2) and also from any product liability claims based on alleged defects in Purchaser's design or modification.

10. **Special Manufactured Goods**. Purchaser shall hold harmless and defend Forte against all loss, damage, and expense (including attorneys' fees) arising from any patent or other property right infringement claims on goods manufactured in accordance with Purchaser's specifications and from any product liability claims based on alleged defects in Purchaser's design.

11. **Trade Uses, Governing Law**. All trade uses and customs of Forte's industry shall apply to this sale and shall constitute part of the agreement between Forte and Purchaser to the extent not inconsistent herewith. Except as modified herein, the Illinois Uniform Commercial Code shall govern this transaction. Typographical and clerical errors are subject to correction.

12. **Modifications**. No additions, modifications, or changes of the foregoing terms by Purchaser in connection with any order relating hereto shall be binding upon Forte unless specifically agreed to by Forte in writing.

Forte Automation Systems, Inc.
9918 North Alpine Road
Rockford, Illinois 61115
815/633-2300
815/633-7131 FAX

QuickLinks

Exhibit 10.23

ACCURAY INCORPORATED

AMENDED AND RESTATED
INTERNATIONAL DISTRIBUTOR AGREEMENT

This Amended and Restated International Distributor Agreement (this "***Agreement***") is effective as of April 1, 2004 (the "***Effective Date***"), by and between Accuray Incorporated, a Delaware corporation with its corporate headquarters located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, USA, ("***Accuray***"), and President Medical Technologies Co., Ltd. Inc., a Taiwanese corporation with its principal place of business at 10F-1, No. 560, Sec. 4 Chung Hsiao East Rd, Taipei 110, Taiwan, Republic of China ("***Distributor***" or "***PMTC***"). Accuray and Distributor together shall be individually referred to herein as a "***Party***" or collectively referred to as the "***Parties***."

WHEREAS, Accuray manufactures and sells full-body radiosurgery products using image-guided robotics, including the CyberKnife Stereotactic Radiosurgery System (the "***CyberKnife***"), which is approved by the United States Food and Drug Administration (FDA) 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.

WHEREAS, in order to achieve its business objectives, Accuray relies on qualified distributors to market and distribute its products in different territories;

WHEREAS, Distributor is a leading distributor of hardware products in the Asian territory and Accuray wishes to appoint Distributor as its exclusive distributor in Taiwan and China, subject to the terms and conditions of this Agreement and Distributor wishes to accept such appointment;

WHEREAS, the parties previously entered into a certain International Distributor Agreement as of [October 25, 2002], as amended by a certain amendment titled "Amendments to International Distributor Agreement Dated October 25, 2002", undated (collectively, the "***Existing Agreement***") for purposes of distributing the CyberKnife;

WHEREAS, Accuray and Distributor wish to continue their relationship but desire to amend and restate the terms of their agreement in order to resolve any issues under the Existing Agreement and establish a relationship in which both parties will diligently pursue their obligations with a view to maximizing CyberKnife sales in Taiwan and China; and

WHEREAS, Accuray and Distributor are entering into this Agreement as of the 1st day of June, 2004 (the "***Effective Date***") which replaces and terminates the Existing Agreement.

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

NOW THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

Distributor — Name:	**President Medical Technologies Co., Ltd. Inc. *("PMTC" and "Distributor")***
Type of Legal Entity:	**Corporation**
Address of Principal Office:	**10F-1, No. 560, Sec. 4 Chung Hsiao East Rd Taipei 110, Taiwan Republic of China**
Territory:	**Taiwan, Republic of China and Peoples Republic of China (including Hong Kong)**
Initial Term:	**Fifty-five (55) months, beginning June 1, 2004, and ending December 31, 2008 (unless extended as provided herein).**

Signatures:

DISTRIBUTOR:		**ACCURAY INCORPORATED:**	
By:	/s/ HUAN-CHIU KUO	**By:**	/s/ EUAN THOMSON
Typed name:	Huan-Chiu Kuo	**Typed name:**	Euan Thomson
Title:	General Manager	**Title:**	Chief Executive Officer
Date:	08-06-04	**Date:**	11-06-04
		/s/ DARREN J. MILLIKEN	6/11/04
		General Counsel	

1. Definitions and Provisions

1.1. ***Accuray Terms of Sale*** means the current standard international transaction terms and conditions of sale prepared by Accuray from time to time (including FOB Sunnyvale).

1.2. ***Change in Control*** means where Accuray becomes controlled, or more than 50% owned, by another party.

1.3. ***Customer*** means a person or business entity lawfully doing business in the Territory, which has needs during the Term of this Agreement, which could be satisfied by Products and to whom Distributor or Sub-Distributor has sent a Proposal.

1.4. ***Excluded Territories*** means (i) Burma, Cambodia, India, Indonesia, Korea, Malaysia, Mongolia, Pakistan, Philippines, Singapore, Thailand and Vietnam (collectively, the "***Excluded Asian Territories***"), and (ii) any other country or territory not included within the Territory.

1.5. ***First-Line Field Service*** shall include local coordination for site preparation and installation, first point of contact for malfunctions including receipt of phone calls from Customer, return of phone calls within four (4) hours, instruction in the proper operation of CyberKnife, on-site service visits to Customer when appropriate to perform diagnostic failure analysis, promptly notify Accuray of needed service and help coordinate Accuray service visit, attend each site for three (3) days four (4) times per year to support Accuray personnel performing preventative maintenance, other repair and maintenance activities if personnel are qualified and those activities have been pre-approved by Accuray, coordination with designated Accuray service personnel, and such other activities that shall be agreed between the parties.

1.6. ***Orders*** mean those written orders for a Product issued by a Customer to Distributor or Sub-Distributor (as applicable) who has submitted a Proposal to Customer, such Order indicating the quantity of Products that Customer wishes to order from Distributor or Sub-Distributor (as applicable).

1.7. ***Purchase Orders*** means a written document issued by Distributor to Accuray indicating the quantity of Products that Distributor wishes to order from Accuray to fulfill Customer Orders.

1.8. ***Products*** means the products comprising or related to Accuray's CyberKnife manufactured by or for Accuray and listed in **Exhibit A** attached to this Agreement.

1.9. ***Project*** means new or replacement equipment installation that could be carried out in such a way as to include Products.

1.10. ***Proposal*** means a document submitted by Distributor or Sub-Distributors to Customers that offers to provide Products.

1.11. ***Service Contracts*** means the separate maintenance and support agreement executed between Customer and Accuray regarding the Products and listed in **Exhibit A** attached to this Agreement.

1.12. ***Specifications*** means the current written description of a Product prepared by Accuray and provided to Distributor from time to time.

1.13. ***Sub-Distributor*** means a distributor appointed by Distributor on its behalf to act as a distributor of Accuray's Products in Territory.

1.14. ***Term*** means the period of time that commences at the beginning of the "Initial Term" (as defined on the cover sheet of this Agreement) and ends upon termination or expiration of the Agreement (defined on the cover sheet of this Agreement).

1.15. ***Territory*** means the countries or portions of countries listed on the cover sheet of this Agreement. The Territory shall not include any of the Excluded Territories

2. Duties of Accuray

2.1. **Exclusive Appointment**. Subject to Distributor's compliance with the terms and conditions of this Agreement, Accuray appoints Distributor, and Distributor accepts such appointment, as the independent, exclusive distributor of the Products listed in **Exhibit A** in and limited to the Territory. Subject to Distributor's compliance with the terms and conditions of this Agreement, during the Term of this Agreement, Accuray will not appoint another distributor of the Products in the Territory. This exclusive appointment shall be exclusive even as to Accuray.

2.1.1. *Volume of Business*: So long as Distributor achieves the Volume of Business set forth in **Section 3.13** below and otherwise meets its material obligations under this Agreement, Distributor shall be the exclusive distributor of Accuray Products in the Territory.

2.1.2. *Exclusivity Limitations*: As long as Distributor is the exclusive distributor in the Territory, Accuray agrees not to sell the Products to any Customer inside the Territory, and will make every effort to ensure that no other distributor sells the Products in the Territory. Distributor agrees not to sell the Products to any Customer outside the Territory and acknowledges that Accuray will directly manage all distribution and sales in other territories, including the Excluded Territories.

2.2. **Transition**. Distributor's rights and obligations within the Territory pursuant to this Agreement are effective from June 1, 2004. Accuray acknowledges that Distributor, pursuant to the Existing Agreement, has helped to represent Accuray in the Excluded Asian Territories, particularly Korea. Accuray and Distributor wish to achieve a successful transition from the prior distribution activities of Distributor (in the Excluded Asian Territories pursuant to the Existing Agreement) to the new activities in the Territory described under this Agreement.

2.2.1. *Compensation*: Provided that this Agreement is executed on or before June 15, 2004, but having an Effective Date of June 1, 2004, Accuray will compensate Distributor for continued successful Accuray sales activities in the Excluded Asian Territories according to the schedule below. PMTC will receive a commission on any sale in the Excluded Asian Territories as follows, provided that PMTC supports the efforts of Accuray or its distributors in the Excluded Asian Territories by providing business development and support, as later agreed between Accuray and PMTC:

2.2.1.1. *Year 1*: PMTC will receive a commission of $[*] for any sale in the Excluded Asian Territories (represented by shipment of the CyberKnife from Accuray's plant) through November 1, 2004 and $[*] for any sale in the Excluded Asian Territories (represented by shipment of the CyberKnife from Accuray's plant) through May 31, 2005.

2.2.1.2. *Year 2*: PMTC will receive a commission of $[*] for any sale in the Excluded Asian Territories (represented by shipment of the CyberKnife from Accuray's plant) in the second year of the Agreement, from June 1, 2005, through May 31, 2006.

2.2.1.3. No further commissions will be due PMTC, unless otherwise mutually agreed to by the parties in an agreement signed by both parties.

2.2.2. *Existing Inventory*. PMTC has two (2) CyberKnife units in its inventory from orders pursuant to the Existing Agreement. The parties agree that the existing inventory units will be used to satisfy the first two (2) orders placed for a CyberKnife unit in either the Excluded Asian Territories or the Territory. For example, if either (i) Accuray or an Accuray distributor in the Excluded Asian Territories or (ii) Distributor receives an order for a CyberKnife unit in the Territory or the Excluded Asian Territories, such order will be fulfilled with one of Distributor's existing units.

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2.3. **Products**. Subject to Distributor's timely submission of Purchase Orders, Accuray will use all commercially reasonable efforts to provide timely to Distributor those Products required to fulfill Orders received by Distributor pursuant to Proposals submitted to Customers by Distributor. Accuray will notify Distributor immediately upon determining that it cannot meet a delivery date agreed upon by Accuray and Distributor, and will reimburse Distributor for any late delivery penalty actually paid by Distributor of which Accuray was aware at the time of agreeing upon the delivery date.

2.4. **Warranty**. Accuray warrants that the Products will be free from defects in material and workmanship under normal use in accordance with the documentation for a period of one (1) year from the date of acceptance by Distributor, but not to exceed twenty-four (24) months from date of shipment, provided however, for the above period Accuray warrants software media and firmware media furnished by Accuray in or for use with the Products (i) to be free of defects in materials which cause failure to execute programming instructions and (ii) to be free of errors which cause failure to perform substantially in accordance with the operational features of Accuray's published Specifications for the Product at the time of sale, but Accuray makes no warranty that the operation of any software or firmware will be uninterrupted or error free.

2.4.1. Accuray and Distributor will share the cost of such warranty as follows: (i) Accuray will, at its option, decide to repair or replace any Product during the warranty period that does not comply with such warranty, (ii) Accuray shall be responsible for replacement of parts in connection with such warranty claims and (iii) Distributor shall be responsible for all labor provided in connection with such warranty claims.

2.4.2. Accuray will have no obligation to the extent that any failure of a Product to comply with the limited warranty set forth above results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Accuray's published specifications or user manual; (iii) modifications, alterations or repairs to the Product made by a party other than Accuray or a party authorized by Accuray; (iv) any failure by Distributor, Customer or a third party to comply with environmental and storage requirements for the Product specified by Accuray, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any third-party devices or products that have not been provided or recommended by Accuray.

2.4.3. Except as expressly stated in this **Section 2.4**, Accuray makes no further express or implied warranties or representations to Distributor or to any other party regarding any of the Products. Accuray disclaims all other warranties and representations, whether express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose or non-infringement, and any warranties arising out of course of dealing or usage of trade.

2.4.4. Distributor will not make any warranties or representations in Accuray's name or on Accuray's behalf.

2.5. **Third Party Intellectual Property Rights**. In the event that, during the Term of this Agreement, a third party makes a claim or files a suit against the Distributor on the theory that the Distributor's sale of Products infringes the third party intellectual property rights, Accuray will undertake the defense of Distributor in that claim or suit. In the event of a finding of infringement, Accuray will indemnify the Distributor against any final damage award against Distributor and will remedy the infringement by (i) obtaining for Distributor the right or license to continue using the Product including the infringing feature, (ii) changing the Product so as to make it non-infringing while still performing its essential functions, or (iii), if neither of these remedies is successful, allowing Distributor to terminate this

Agreement. This duty of indemnification shall not apply if Distributor has made any changes to the Products not authorized by Accuray, or has failed to implement upgrades or modifications to the Products provided by Accuray which would eliminate such infringement claim.

2.6. Product Pricing.

2.6.1. *Pricing*. Product pricing will be provided by Accuray to Distributor from time to time during the Term of this Agreement. The current list price for Products is set forth on **Exhibit A**. Products shall be priced by Accuray in accordance with Accuray's price list in effect from time to time, provided that Accuray agrees not to increase the pricing of any significant Product or component without three (3) months' prior written notice to Distributor, except that any adjustment shall be subject to provisions of sales agreements signed between Distributor and Customers.

2.6.2. *Asian Market Pricing Policy*. Accuray agrees to implement within six (6) months from the date of signing of this Agreement, a unified Asian Market Pricing Policy that will apply to all of Accuray's distributors in the Asian Marketplace, including Distributor, with which Accuray signs a contract after the Effective Date of this Agreement.

2.7. Adaptation of Product Specifications & Promotional Materials. Accuray may provide Distributor, from time to time during the Term, Product Specifications, end user documentation and such other promotional literature, in reasonable quantities, for use by Distributor in its dealings with Customers. Accuray will also provide studies of the performance of Products and scientific journal reprints as Distributor shall reasonably request for follow up with particular Customers. Such materials will be provided in the English language. Distributor, at its own expense, will translate such materials into such other languages as Distributor determines are necessary or desirable. Distributor will obtain Accuray's approval of the translated materials prior to distributing or using them. Distributor hereby irrevocably assigns and transfers to Accuray, and agrees to irrevocably assign and transfer to Accuray, all of its rights, title and interest in all such translated materials, including but not limited to all related copyrights and moral rights. Distributor also, on behalf of itself and its employees and subcontractors, waives and agrees never to assert any and all moral rights that Distributor or its employees or subcontractors may have in or with respect to the translated materials, even after termination or expiration of this Agreement.

2.8. Product Upgrades. While Accuray will typically upgrade its principal Product (the CyberKnife), by means of annual releases, it is understood that Accuray may do more frequent upgrades and will use reasonable efforts to give Distributor as much advance notice of upgrades as is feasible.

2.9. Training.

2.9.1. *Initial Training*. With respect to all Products ordered by Distributor up to and including the Effective Date, Accuray has provided training, and fulfilled its training obligations, to Distributor under the Existing Agreement.

2.9.2. *Modifications and Improvements to Products*. Accuray will provide reasonable training to Distributor with respect to any modifications or improvements to the Products made after the Effective Date ("***Update Training***"). Such Update Training shall be provided free of charge by Accuray to Distributor at a location, either within or outside the Territory, chosen by Accuray in its sole discretion. Distributor will pay for travel and related expenses.

2.9.3. *Customer Training*. Accuray will provide training for a team of maximum [5] personnel of each Customer who purchases a CyberKnife unit through Distributor. The training will take place at Accuray's training center in its Sunnyvale offices or at a location in

Accuray's sole discretion. Accuray will pay for the first such Customer training and Distributor will pay for any and all travel and related expenses associated with such first Customer training, unless otherwise agreed between Distributor and Customer.

2.9.4. *Subsequent Training*. Additional training will be available to Distributor, its Sub-Distributors or Customers according to Accuray's then-current training price list. Distributor will pay for any and all travel and related expenses for such additional training, unless otherwise agreed between Distributor and Sub-Distributor or Customer (as applicable).

2.10. **Installation, Service and Maintenance**. Distributor shall be responsible for providing installation of the Products at its sole expense as provided in **Section 3.11**. If a party other than Distributor performs the installation, Distributor, or Sub-Distributor, will provide at their cost a minimum of two (2) technicians, who must be able to translate and assist the team during the entire installation period. Site planning, including understanding and complying with local electrical, safety, and construction codes, is the responsibility of Distributor. Distributor is responsible for First-Line Field Service (as provided in **Section 3.16**) and all maintenance and warranty services (excluding the cost of warranty parts) required in connection with the limited warranty provided in **Section 2.4**. All other maintenance and service will be handled under a separate Service Agreement between Accuray and the Customer.

2.10.1. *Accuray Installation Services*. Accuray and Distributor will enter into good faith negotiations for the provision of installation services by Accuray. Distributor may submit a Purchase Order to Accuray for the provision of installation services for specific installations. If Accuray accepts the Purchase Order, Distributor will provide Accuray with the requested timing and location of the installation with an initial payment of $[*]. Distributor will make reasonable efforts to provide Accuray at least three (3) months' prior written notice of such installation request, and Accuray will make reasonable efforts to provide the installation services on or near the dates requested. The balance of the amount due will be paid within thirty (30) days after the Customer accepts the installed Product. Accuray agrees to make its installation services available to Distributor at a list price of $[*], plus reasonable out-of-pocket travel and accommodation expenses. Pricing is subject to the terms stated herein, including **Section 2.6**.

2.11. **Service Contracts** will be the responsibility of Accuray. Accuray will hold Service Contracts directly with Customers. The current list price is set forth on **Exhibit A**. If Distributor finds it unrealistic for Accuray to achieve the list price for Service Contracts in the Territory, Accuray will make a good faith effort to evaluate its costs of providing the Service Contract, and will negotiate with Distributor to reduce the list price to a level that will cover Accuray's costs and provide a reasonable margin of profit. Accuray will provide field service personnel who will travel to the Customer sites for service above and beyond First-Line Field Service. Should Accuray desire to contract with a third party to provide some portion of this service, Accuray agrees to offer such a contract to Distributor first, if Distributor declines, then Accuray may contract with another third party in its sole discretion. Accuray and Distributor will negotiate training and rates for this subcontracting as necessary.

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2.12. **General Manager**. Accuray will appoint a general manager to oversee the CyberKnife distribution operations in Asia, including the Territory and Excluded Asian Territories ("***General Manager***"). At Accuray's discretion, such General Manager may be resident in the Excluded Asian Territories or Territory (and, if the latter, may be based in Distributor's offices in the Territory). Such General Manager may assist Accuray in coordinating the efforts of Accuray and Distributor, and developing Accuray's presence and business in Asia, but will not sell the Products in the Territory. The General Manager will give support to Distributor's marketing efforts in the Territory; however, Distributor is responsible for all marketing efforts in the Territory.

2.13. **Meetings**. Accuray and Distributor shall establish a committee (the "***Coordination Committee***") that will be responsible for (i) improved communications between the parties; (ii) setting, and if necessary adjusting, the strategic roles of the parties, the strategic direction of the distribution relationship itself, or the Territory or Excluded Asian Territories; (iii) reviewing the timetable and achievement of the distribution relationship; (iv) making decisions regarding material variations to the distribution timetable and/or territories; (v) reviewing whether Accuray can assist Distributor in its regional Taipei offices; (vi) reviewing sales projections and sales forecasts; (vii) discussing any escalated issues or disputes between the parties that are raised; (viii) reviewing market trends; and (ix) addressing such other matters regarding the parties' relationship and the operation of the Coordination Committee as the parties or the Coordination Committee may determine, including adopting a process for obtaining feedback from the parties regarding fulfillment of the Coordination Committee's responsibilities and evaluation of the parties' relationship. Such Coordination Committee will have no right or authority to bind or create obligations on behalf of Accuray in any way.

Accuray and Distributor shall each nominate two (2) individuals to serve as representatives on the Coordination Committee (the "***Coordination Committee Representatives***"), provided, however that at least one (1) nominee from Accuray Party shall be the General Manager. Each Party shall be entitled to change one or more of its respective Coordination Committee Representatives upon written notice to the other Party. Accuray shall also have the right, in its sole discretion, to nominate representatives from the Excluded Asian Territories to serve as representatives on the Coordination Committee.

The Coordination Committee shall use their good faith efforts to hold regular meetings at such time and place as it shall determine, but no less frequently than as follows:

(i) monthly tele-conference calls; and

(ii) meetings in person quarterly.

3. Duties of Distributor

3.1. **Sub-Distributors**. Distributor may appoint one (1) or more Sub-Distributors after review from Accuray, as long as Distributor adopts reasonable suggestions from Accuray. Accuray will respond within one (1) month after receiving proposal from Distributor with respect to the proposed appointment of any Sub-Distributor. Distributor agrees that its agreements with Sub-Distributors may not be inconsistent with the provisions of this Agreement, will inform all Sub-distributors of their responsibilities under this Agreement and will monitor their compliance with such responsibilities. Within ten (10) days after execution, Distributor will provide Accuray with a copy of any agreement it has entered into with a Sub-Distributor.

3.2. **Status**. Distributor and each Sub-Distributor shall be and must at all times make it clear to Customers that they are independent entities contracting with Accuray, and are not the employees, representatives or agents of Accuray. Distributor and each Sub-Distributor will not

make any representations on Accuray's behalf and will not have the ability or authority to bind Accuray legally to anything. Distributor acknowledges that it, and each Sub-Distributor, are involved in other businesses, not competitive with their activities under this Agreement but of sufficient volume and profitability that their entire business is not solely dependent upon this Agreement or their relationship with Accuray for their continuing viability or success.

3.3. **Market Knowledge, Promotion and Sales**. Distributor, on its own or through Sub-Distributors, must have a thorough knowledge of the Territory and of all Projects and potential Projects, which could include Products.

3.3.1. Distributor, whether acting on its own or through Sub-Distributors, will use all reasonable efforts to vigorously promote and advertise the sale of and to sell Products to Customers in accordance with Accuray's marketing guidance and policies in effect from time to time.

3.3.2. In performing its duties, Distributor should learn of, and promptly report to Accuray, each Project that is proposed to be carried out by Sub-Distributors or Customers. Distributor will make itself reasonably familiar with each such Project so as to learn all conditions of the Project that may impact the Products to be offered. In addition, as Accuray releases new features and Products (releases which add new functional capability to a Product, as distinguished from periodic releases of bug fixes and improvements which do not add such capabilities and which are customarily provided by Accuray to customers without separate charge), Distributor will use all reasonable efforts to promote the sale of and to sell those features and Products to the installed base of Products in the Territory.

3.3.3. Distributor will report to Accuray, as soon as practicable after learning about them, all proposed or pending Projects inside the Territory about which Distributor learns during the Term of this Agreement.

3.3.4. Distributor will provide Accuray, as soon as practicable after receipt, copies of any signed contracts with or Purchase Orders from hospitals in the Territory.

3.3.5. During the Term of this Agreement and for a period of three (3) years after any termination or expiration thereof, Distributor will maintain complete and accurate books, records and accounts relating to the distribution of the Products, and will permit Accuray's authorized representatives to examine them on reasonable prior notice.

3.4. **Clinical Trials & Development**. If Distributor determines that regulatory clinical trials are necessary in a region, Distributor will promptly inform Accuray of such determination and make a proposal to Accuray for consideration. Distributor and Accuray will determine whether clinical trials are cost-effective and, in good faith, will determine whether and how such trials should be conducted and funded. In general, Accuray will contribute to the cost of clinical trials if they reasonably have value outside of the Territory and Distributor will coordinate clinical trial activities in the Territory as mutually agreed between the parties from time to time.

3.5. **Approvals and Regulatory Activities**. Distributor will be responsible for registering all Accuray Products with and obtaining all necessary permits and approvals from all applicable local regulatory bodies. During the Term of this Agreement, Distributor will further perform the following regulatory activities, at its own expense:

- Diligently continue efforts to obtain "Body" and "Express" approvals in Taiwan;
- Diligently continue efforts to update filing and obtain "Express" approval in China;
- Reasonable, timely efforts to obtain "Body" approval in China;

- Reasonable, timely efforts to obtain "Synchrony" approval in Taiwan and China following "Body" approvals;
- Reasonable, timely efforts to obtain approval for further upgrades that have a commercial value in the Territory;
- Reasonable efforts to improve or obtain reimbursement, to be mutually agreed by the parties; and
- Fulfillment of all import permits, licenses, construction permits and radiation protection requirements for the Products.

During the Term of this Agreement, Accuray will provide reasonable support and materials to aid the Distributor in the performance of the above listed regulatory activities.

3.5.1. Prior to submission, Distributor will provide copies of any regulatory submission to Accuray for approval, and Accuray shall review such submission within a reasonable period of time. Distributor will provide copies of any final regulatory submissions or approvals, and any other correspondence to or from the regulatory body, to Accuray within ten (10) days of the final submission or approval. Accuray may require translation into English at its expense.

3.5.2. Upon termination of this Agreement, the ownership of all regulatory submissions and approvals shall pass to Accuray. Should Accuray terminate this Agreement, through no fault of Distributor, within one year from the date of such regulatory submission or approval then Accuray shall reimburse Distributor a pro-rata share of the costs of such regulatory submissions and approvals based upon the length of time remaining in that particular year.

3.6. **Personnel**. Distributor, either itself or through Sub-Distributors, will provide personnel, dedicated to its business relating to the Products and having backgrounds in surgical and/or radiation oncology products, adequate in number to perform the following functions:

3.6.1. Marketing, in coordination with the marketing efforts of Accuray;

3.6.2. Sales, sales management, sales forecasting, and order management;

3.6.3. Training of Customer personnel;

3.6.4. Clinical trials, regulatory compliance, and reimbursement;

3.6.5. Product management; and

3.6.6. First-Line Field Service, installation coordination and support.

Nothing in this paragraph shall be deemed to require that a separate person perform each of these functions; two or more functions may be performed by the same person, if that person is able to do so.

3.7. **Proposals**. Distributor or Sub-Distributor will submit a timely Proposal to Customer on every Project in the Territory during the Term of this Agreement. Proposals will offer only Products described in current Specifications, and only on the then-current Accuray Terms of Sale, which shall be presented to the Customer as the Distributor's terms of sale. Unless Distributor has prior written consent from Accuray to the contrary, all Proposals submitted by Distributor or Sub-Distributor are (and they must inform the Customer that they are) subject to change in the event the Accuray Terms of Sale or Specifications change prior to the time Distributor accepts an Order from the Customer (if it does). Proposals will be reviewed by Distributor with Accuray before submission to the Customer unless there is a substantial risk that Accuray

Products will be eliminated from consideration by the Customer unless a Proposal is submitted to the Customer immediately. The accuracy and cost of any translation of Accuray materials into a language other than English, which may be required for a particular Customer, shall be the responsibility of Distributor.

3.8. **Orders**. Distributor will receive each Order placed by a Customer to which Distributor or Sub-Distributor has submitted a Proposal. Orders may be accepted only by Distributor, or Sub-Distributor if authorized by Distributor. The resulting contract for the sale of Products shall be between Distributor, or Sub-Distributor if authorized, and the Customer.

3.9. **Forecasting**. Distributor will provide to Accuray a rolling twelve (12) month forecast. This forecast is due to Accuray's Vice-President of Sales and Marketing within fifteen (15) days of the end of each quarter for the four (4) quarters which follow the quarter in which the forecast is given. Distributor's forecasts are provided to facilitate Distributor's marketing planning and Accuray's production planning, and shall not be considered contractual promises to purchase Products.

3.10. **Purchase Orders**. Distributor shall give Accuray a Purchase Order or Letter of Intent nine (9) months in advance of an order's proposed shipment date. Within four (4) to six (6) months prior to the proposed shipment date, Distributor must confirm the Purchase Order and pay a first installment of US $[*], which is non-cancelable and non-refundable. All Purchase Orders shall be subject to the terms and conditions of this Agreement and then-current Accuray Terms of Sale, and any terms included on Distributor's form of Purchase Order that are inconsistent therewith shall be of no force or effect.

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3.11. **Installation**. Distributor shall be responsible for providing installation of each Product (that is, each CyberKnife system) at its sole expense. Distributor may engage others or will perform the installation itself, at its sole expense. Distributor agrees to give consideration to engaging others (*e.g.*, ATC, YCK or ab medica) to perform installations. If a party other than Distributor performs the installation, Distributor, or Sub-Distributor, will provide at their cost a minimum of two (2) technicians, who must be able to translate and assist the team during the entire installation period. Site planning, including understanding and complying with local electrical, safety, and construction codes, is the responsibility of Distributor.

3.11.1. Distributor may submit a Purchase Order to Accuray for the provision of installation services for specific installations in accordance with **Section 2.10.1**.

3.12. **Payment**. Payment for Products shall be made by Distributor to Accuray in the form of irrevocable trade finance letter of credit issued by Distributor's bank, confirmed by a bank that is doing business in the State of California, United States of America, in all respects, including the confirming bank, acceptable to Accuray, and delivered to Accuray with the Purchase Order. The letter of credit will provide that Accuray can draw against the letter of credit according to the following schedule:

3.12.1. US $[*] (non-cancelable, non-refundable) upon Accuray's acceptance of the Purchase Order, which must be at least four (4) to six (6) months prior to the firm shipment date;

3.12.2. Balance except for ten percent (10%) upon presentation of documents evidencing shipment of the Products to Distributor.

3.12.3. Final ten percent (10%), billed upon shipment, will be due one hundred eighty (180) days following shipment.

3.13. **Volume of Business**. Accuray and Distributor have reviewed and discussed the Territory in detail and have agreed that Distributor should be able to generate the volume of Orders, acceptable to Accuray, as set forth in **Exhibit B** and attached to this Agreement. Distributor will order and pay for at least the minimum quantities of Products specified in **Exhibit B** within the times periods set forth in **Exhibit B**. It is understood that, during any period in which Distributor is falling short of the agreed volume of business, Distributor will, upon Accuray's request, promptly provide Accuray with a written report explaining Distributor's failure to meet its minimum requirements and Accuray may, but shall not be required to, determine in its sole discretion which of the following steps is appropriate: (i) place Distributor on probationary status for not less than three (3) and as many as nine (9) months until such time as it reasonably appears to Accuray's Sales Manager that the agreed volume will be reached and, if Distributor has not achieved the cumulative volume required by the end of the probationary period, terminate this Agreement; (ii) convert Distributor's appointment under this Agreement to non-exclusive; or (iii) modify the Territory.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

3.14. **Training**. Distributor will maintain sufficient technical and sales personnel and will cause such personnel to be able to (i) provide training, based on training provided by Accuray, and will coordinate with Accuray to provide more technical training if necessary, regarding, and (ii) inform Customers about the capabilities and operation of the Products to all Customer personnel (surgeons, radiation oncologists, radiation physicists, technicians and nurses) who will use the Products. Distributor or Sub-Distributor will also provide to all Customer billing and reimbursement personnel training regarding compliance with regulatory and billing requirements relating to reimbursement for treatment provided with Products under applicable radiosurgical reimbursement codes. Distributor will cause its personnel and Sub-Distributors' personnel to be adequately trained on Products. As requested by Accuray, Distributor will cause personnel to be trained to help install Products. Distributor will be responsible for assuring that its personnel and Sub-Distributor personnel maintain adequate proficiency with respect to the Products and all upgrades, enhancements and new feature releases. Accuray will be responsible for providing required Update Training on the CyberKnife and service contracts in accordance with **Section 2.9.2**, above. Training on any subsequent upgrades to Distributor and Sub-Distributors will be provided in accordance with **Section 2.9.4** above.

3.15. **Customer Relations**. Distributor shall deliver Products to Customers in the Territory, shall report promptly to Accuray any complaints or expressions of dissatisfaction by the Customer relating to the Products, and shall assure the preservation of any Products rejected by a Customer. While Distributor shall have no authority to offer on behalf of Accuray anything in settlement of any such complaints or expressions, Distributor shall use all reasonable efforts to satisfy the Customer that the Products meet the applicable Specifications, Proposal and Order, if such is the case.

3.16. **First-Line Field Service & Maintenance**. Distributor, either itself or through Sub-Distributors, will provide to all Customers, remotely and on-site when needed, First-Line Field Service for all installed Products in the Territory. Distributor will coordinate with Accuray for more technical service needs, and will support Accuray as necessary. Distributor will cause its First-Line Field Service personnel to complete Accuray CyberKnife technical training or on-the-job training, and to review the Accuray maintenance manual, that Accuray may update from time to time, prior to performing maintenance activities.

3.16.1. Distributor is responsible for all maintenance and warranty maintenance services (excluding the cost of warranty parts) required in connection with the limited warranty provided in **Section 2.4**. All other maintenance and service will be handled under a separate Service Agreement between Accuray and the Customer.

3.16.2. In each geographical region (to be determined by Distributor, with the goal to provide timely service response) in the Territory, Distributor or Sub-Distributor will maintain a stock of spares and components adequate to perform First-Line Field Services and maintain the Products as required by this Agreement. Accuray and Distributor will work together to determine such adequate stock supply, taking into consideration past and present Product Orders and warranty claims history. Such stock level determination may be revised from time to time by the Parties.

3.16.3. Accuray and Distributor will agree on a Customer price list for spare parts, and both parties agree to sell spare parts to the Customer at the price agreed in the price list.

3.17. **Compliance With Laws.**

3.17.1. **Within the Territory**. When Products are being shipped to Distributor, unless the particular Purchase Order provides otherwise, Distributor shall be responsible for all import duties and other import, licensing and immigration formalities which must be

complied with in order for the Products to be lawfully imported into the Territory or any of the services (including installation, Front-Line Field Service or limited warranty maintenance services) to be lawfully performed in the Territory.

3.17.2. **United States Laws**. Distributor understands that, because it is distributing the Products of Accuray, a company subject to the laws of the United States of America, Distributor must, when carrying out its duties under this Agreement, avoid violations of certain of such laws. These include, but are not necessarily limited to, the following:

3.17.2.1 **Restrictive Trade Practices or Boycotts**, U.S. Code of Federal Regulations Title 15, Chapter VII, Part 760.

3.17.2.2 **Foreign Corrupt Practices Act**, U.S. Code Title 15, § 78.

3.17.2.3 **Export Controls** imposed by U.S. Executive Order or implementing regulations of the U.S. Departments of Commerce, Defense or Treasury.

3.17.2.4 Local Laws within the Territory, the Distributor shall comply with any and all local laws within the Territory. Should any such local laws within the Territory conflict with United States Laws, Distributor shall bring such conflicting laws to the attention of Accuray.

3.18. **Competing Products**. During the Term of this Agreement, Distributor and Sub-Distributors will not, with respect to Customers located or having Projects in the Territory, sell, promote the sale of, distribute or represent in any way products or services that Accuray, in its sole discretion, deems to be competitive with the Products, unless both parties agree to such distribution, such agreement not to be unreasonably withheld, in which case a specific agreement for that competitive product distribution will be prepared that is reasonably satisfactory to both parties.

3.19. **Financing**. Distributor will use its best efforts to facilitate successful financing for commercially appropriate joint ventures with hospitals. Such potential financings will be dealt with on a case-by-case basis separately from the distribution activities under this Agreement.

3.20. **Business Conduct**. Distributor and its Sub-Distributors will: (i) conduct business in a manner that reflects favorably at all time on the Products and the good name, goodwill and reputation of Accuray; (ii) make no false or misleading representations or advertisements with regard to Accuray or the Products; and (iii) make no representations, warranties or guarantees to Customers or to the trade with respect to the specifications, features or capabilities of the Products that are inconsistent with the literature distributed by Accuray.

3.21. **Meetings**. Accuray and Distributor shall meet in accordance with the provisions set forth in **Section 2.13** above.

4. Compensation and Payment

4.1. **Compensation**. Other than the commission payments provided for in **Section 2.2.1** above, Distributor's only compensation for its efforts on Accuray's behalf shall be the margins it earns on the resale of Products, and Distributor shall bear all of the expenses that it incurs in making those efforts.

4.2. **Payment**. Distributor shall be solely responsible for determining the creditworthiness of and collecting payment from its Customers and Sub-Distributors. The risk of non-collection from the Customer or Sub-Distributor will be borne entirety by Distributor, which shall be responsible for making timely payment to Accuray for Products whether or not Distributor is successful in collecting from its Customer or Sub-Distributor.

5. Term and Termination

5.1. **Term**. The initial Term of this Agreement shall be the period specified as the "Initial Term" on the cover sheet, unless this Agreement is sooner terminated in accordance with the paragraph immediately below. The Term of the Agreement may be extended on an annual basis by mutual agreement as discussed in 3.11 and 3.12.

5.1.1. Notwithstanding the above, Accuray may terminate this Agreement immediately if Distributor fails to finalize a sale (i.e., Distributor ships to its Customer) at least [*] CyberKnife [*] to a hospital or other medical facility within the Territory in two consecutive six (6) month periods of the Agreement. The initial six (6) month period will be calculated as June 1, 2004—November 30, 2004. In the event of such a termination, each party must still fulfill any obligations accrued on or before the effective date of such termination.

5.2. **Termination Without Cause**. Regardless of any other provisions in this Agreement, either party may terminate this Agreement without cause within the first two (2) years of this Agreement, upon six (6) months advance written notice to the other party. In the event of such a termination without cause:

5.2.1. Each party must still fulfill any obligations, including but not limited to pending Purchase Orders, accrued on or before the effective date of such termination.

5.2.2. Accuray will pay Distributor $[*] per unit for up to two (2) units sold in the first six (6) months after the effective date of termination.

5.2.3. If Accuray terminates under this section and the effective date of termination is less than twelve (12) months from the Distributors receipt (or approval) of a registration applied for by Distributor under **Section 3.5**, then Accuray shall reimburse Distributor for actual and reasonable expenses incurred for such registration. The actual and reasonable expenses shall be distributed equally over the twelve month period from date of receipt (or approval) of such registration and Accuray will be responsible to reimburse Distributor for the amounts distributed over the period between the effective date of termination and the date that is twelve (12) months from the date of receipt (or approval) of the registration.

5.2.4. If Accuray terminates under this section and the effective date of termination is twelve (12) months or more from the Distributors receipt (or approval) of a registration applied for by Distributor under **Section 3.5**, then Accuray will not be responsible for any reimbursement to Distributor for any costs of such registration.

5.3. **Term Extension**. During the sixty (60) day period that precedes June 2008, Distributor and Accuray shall meet at a mutually convenient time and location (either within or outside the Territory) and agree upon a minimum volume of acceptable purchases that would cause Accuray to agree to extend the Term of this Agreement for one (1) additional year. If Distributor and Accuray are able to agree upon such a minimum volume, then the Term of this Agreement shall be extended by the year or years as to which such agreement is reached.

5.4. **Termination With Cause**. Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure it within forty-five (45) days after notice of the breach is given by the other party, provided that, as to a breach which cannot be fully cured within forty-five (45) days, that breach shall be deemed timely cured if the cure is commenced immediately upon receipt of notice of it from the other party and pursued diligently to completion. The effective date of termination shall be the date of expiration of the cure period without a cure having occurred.

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5.4.1. **Excess Inventory**. Accuray may terminate this Agreement any time after December 31, 2006, if Distributor has more than one (1) CyberKnife unit in its inventory and such CyberKnife unit has not been allocated for a bona fide Order for shipment in the succeeding three (3) months.

5.5. **Termination Upon Change in Control**. Accuray shall have the right to terminate this Agreement in the event of a Change in Control, acquisition by a third party or a global change in distributorship structure. A global change in distribution structure may be when Accuray, in its sole discretion and in its own best interests, determines the need to change the distribution channels, structure, or arrangements on a global basis. Accuray and Distributor agree to negotiate in good faith an orderly transition of Distributor's distribution rights and activities. Accuray will fulfill all pending Purchase Orders of Distributor at the time of termination. Distributor agrees to assist in the transition. Accuray will pay Distributor $[*] per unit for up to four (4) units sold in the first twelve (12) months after the effective date of termination under this **Section 5.5.**

5.6. **Repurchase of Products, Parts and Tools**. Within a reasonable time after the effective date of termination, Accuray will repurchase from Distributor, at the prices Distributor originally paid Accuray for them, all Parts and Tools owned by Distributor.

5.7. **Accruals**. No termination of this Agreement will terminate any obligation of payment that has accrued prior to the effective date of such termination, nor will it terminate Accuray's obligation to fulfill any Purchase Order from Distributor which Accuray accepted prior to the effective date of termination.

6. Dispute Resolution; Limitation of Liability; Governing Law

6.1. **Discussion**. Should any dispute arise between the parties relating to this Agreement or the business relationship between the parties, it shall be submitted by one or both parties, in writing, to the Chief Executive Officer of Distributor and Accuray's President (the "***Principal Officers***") for discussion and, hopefully, an agreed resolution.

6.2. **Arbitral Determination**. If the Principal Officers are unable to reach agreement upon a resolution of the dispute within thirty (30) days of the date of the written submission, then the dispute shall be submitted to arbitration before a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The situs of the arbitration shall be Honolulu, Hawaii, and the arbitrator shall apply the substantive law of the State of California. Either party may submit the disputed issues to arbitration.

6.3. **Confidential Information**. Notwithstanding anything else in this Agreement, Accuray shall have the immediate right to take to any court having jurisdiction any claim based upon the actual or imminent misuse or unauthorized disclosure of Accuray confidential information as described in **Section 7.1** of this Agreement entitled "***Confidentiality***."

6.4. **Limitation of Liability**. Except with respect to breach of **Section 7.1** entitled "***Confidentiality***," each party's potential liability to the other shall be limited to amounts expressly made due by the terms of this Agreement, and neither party shall be liable to the other for any special, direct, indirect or consequential damages, even if they had reason to foresee such damages.

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6.5. **Applicable Law**. It is the intention of the parties that any disputes between them be resolved in accordance with the express terms of this Agreement. However, to the extent that a court or arbitrator must look beyond this Agreement in order to resolve a dispute, they shall look to the domestic substantive law of the State of California, not including either the choice of law/conflict of laws rules of California or international treaties (such as the U.N. Convention on Contracts for the International Sale of Goods) which would otherwise be applicable in California. It is the specific intent of the parties that this Agreement be fully valid and legally enforceable.

7. Miscellaneous Provisions

7.1. **Confidentiality**. The terms of this Agreement, Accuray Terms of Sale, Specifications, Product Pricing, all Proposals, Projects, Customer lists, requirements and identities, Orders, Purchase Orders, information relating to treatments or otherwise having regulatory significance, and all other proprietary information generated by Distributor under this Agreement or by Accuray shall be considered confidential, proprietary, trade secret information of Accuray. Distributor may use this information only in performing its express duties under this Agreement, and may not disclose it to anyone, with the exception of Customers or prospective Customers as expressly permitted in this Agreement. It is understood and agreed that the confidentiality obligations created by this **Section 7.1** do not apply to information which (a) is in the public domain, through no breach of this or such other confidentiality agreement, (b) was in the possession of the Distributor at the time of the initial disclosure by Accuray as evidenced by documents in the Distributor's files predating such disclosure, (c) was received by the Distributor from a third party, before or after the time of disclosure by Accuray, so long as such information was not disclosed by such third party directly or indirectly in violation of a confidentiality agreement with Accuray, or (d) is required to be disclosed by the Distributor by law or by virtue of a final court order, provided that the Distributor must promptly notify Accuray when such disclosure is sought, and Accuray must be afforded an opportunity to oppose the request for disclosure.

7.2. **Publicity**. Distributor may use Accuray's name or trademarks on its literature, signs, or letterhead, and may make press releases or other public statements disclosing its relationship with Accuray under this Agreement or otherwise upon the prior written consent of Accuray, which consent shall not be unreasonably withheld.

7.3. **Insurance**. Each party shall obtain and keep in full force and effect during the Term of this Agreement (and thereafter until all Projects as to which Accuray has accepted a Purchase Order from Distributor have been completed) comprehensive general and products liability and workers' compensation insurance on an occurrence basis with coverage limits sufficient to provide coverage of any claim which may reasonably arise out of the actions or inactions of that party related to this Agreement or the business relationship between the parties. Distributor may elect not to obtain such coverage in a region in which it is doing business if it is not commercially reasonable, but agrees that it will "self-insure" and be responsible for claims in that region. It is understood and agreed that, as to particular countries in the Territory, Distributor's obligation to provide insurance can be satisfied by the Sub-Distributor covering that country. Each party shall provide to the other from time to time while its obligation under this paragraph is in effect certificates evidencing such insurance, which certificates shall expressly provide that the underlying coverage cannot be cancelled without at least thirty (30) days' written notice to the other party.

7.4. **Interest**. Interest upon any amount due from one of the parties to this Agreement to the other shall be at the one (1) month London InterBank Offered Rate ("***LIBOR***") in effect

from time to time plus three percent (3%) and shall accrue from the date payment of such amount was due until such payment has been completed in collected funds.

7.5. **Titles**. The titles or headings of the various paragraphs and sections of this Agreement are for ease of reference only and are not intended to change or limit the language contained in those paragraphs and sections.

7.6. **Severability**. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

7.7. **Waiver**. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

7.8. **Assignment**. Neither party may assign or otherwise transfer or pledge all or any part of its rights or obligations hereunder without the prior written consent of the other party, and any attempted assignment or other transfer or pledge in violation of this provision shall be void. Notwithstanding the foregoing, in the event of any

7.9. **Writing**. The parties agree that, upon the Effective Date, the Existing Agreement is hereby terminated in its entirety, including any provisions that would otherwise survive termination. It is the intention of the parties that this written Agreement contains the entire agreement between them. It supersedes all other agreements between the parties. No addition to or amendment of this Agreement shall have any effect unless it is also in writing and, with the exception of those matters which Accuray is expressly permitted to change from time to time during the Term of this Agreement (such as pricing, Accuray Terms of Sale, etc.), shall only be valid if signed by the duly authorized officers of both parties.

[EXHIBITS FOLLOW]

Exhibit A

PRODUCTS
(Including Current Pricing)

Products:

The CyberKnife® Stereotactic Radiosurgery System with DTS and one (1) workstation:

Pricing for the First CK Shipped to PMTC Territory in a Calendar Quarter

		PMTC Price		Total Price
BPasic CK with 1 workstation	$	[*]		
		* This price includes the first-year warranty parts.		
Additional Configuration options that **must** be ordered at the same time as CK				
With additional Workstation	$	[*]	$	[*]
With Express	$	[*]	$	[*]
With Axum	$	[*]	$	[*]
With Synchrony (when released)	$	[*]	$	[*]
With 4 Year extended Parts Warranty	$	[*]	$	[*]

Pricing for the Second CK Shipped to PMTC Territory in a Calendar Quarter				
		PMTC Price		Total Price
Basic CK with 1 workstation	$	[*]*		
		*This price includes the first-year warranty parts.		
Additional Configuration options that **must** be ordered at the same time as CK				
With additional Workstation	$	[*]	$	[*]
With Express	$	[*]	$	[*]
With Axum	$	[*]	$	[*]
With Synchrony (when released)	$	[*]	$	[*]
With 4 Year extended Parts Warranty	$	[*]	$	[*]

Adjunct technologies usable with the CyberKnife:

- Accuray fiducials and markers:
  - — Spine Fiducials (5 screws/tumor) — US $[*] per screw
  - — Instrument Sets (1 set/Institution) — US $[*] per set

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Additional capabilities will be priced as Options.

Service Contracts:

- List Price to the Customer for Service Contract for one (1) year US $[*]
- Distributor will receive a [*] percent ([*]%) fee of the Service Contract list price (currently, such percentage equals $[*]) from Accuray with respect to each Service Contract to cover the labor cost of First-Line Field Service and other required maintenance and warranty maintenance services during the Term of this Agreement.

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Exhibit B

PRODUCT VOLUMES

At a minimum PMTC will be required to purchase [*] ([*]) CyberKnife units annually to satisfy the following schedule of shipments by Accuray:

- [*] CyberKnife shipped each [*], with the year having begun June 1, 2004. Each CyberKnife unit must be ordered nine (9) months prior to shipment.
- [*] CyberKnife [*] must be accepted prior to November 30, 2004
- [*] CyberKnife [*] must be accepted prior to May 31, 2005

Distributor agrees to take title to each CyberKnife upon shipment according to the above schedule, and will provide adequate notice to Accuray of each shipment destination.

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QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.24

COMMISSION AGREEMENT

This Commission Agreement ("Agreement") is made as of August 10, 2006 ("Effective Date"), by and between ACCURAY INCORPORATED, a California Corporation with offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, ("Accuray"), and PRESIDENT MEDICAL TECHNOLOGIES CO., LTD. INC., a Taiwanese corporation, located at 8F., No. 1, Guangfu S. Rd., Taipei 105, Taiwan, Republic of China ("PMTC"), each separately being a "Party" and collectively the "Parties".

WHEREAS, the Parties entered into an Amended and Restated International Distributor Agreement ("Distributor Agreement") on April 1, 2004, naming PMTC as Accuray's exclusive distributor in certain specified territories, and pursuant to which PMTC is to receive a commission on the sale of CyberKnife Stereotactic Radiosurgery Systems within those territories;

WHEREAS, PMTC consented by way of a letter dated December 28, 2005 to allow Accuray to sell a CyberKnife System to Hong Kong Adventist Hospital ("HKAH"), which is located within PMTC's exclusive territory; and

WHEREAS, Accuray desires to pay PMTC an appropriate commission for the sale of the CyberKnife System to HKAH as specified herein.

THEREFORE, the Parties hereby agree as follows:

1. *HKAH Agreement.* On December 30, 2005 Accuray entered into a CyberKnife Quotation and Purchase Agreement with HKAH for the sale of a CyberKnife System at a total price of U.S. $[*], which contained the following payment terms:

- $50,000 with Signed Letter of Intent (received by PMTC)
- $[*] due with Signed Agreement (to be signed by December 30, 2005.) Payment by Letter of Credit or T/T to Accuray Incorporated's bank account, upon Customer receiving Hong Kong Government Approval to proceed with project, by no later than January 31, 2006.
- $[*] due upon shipment of the CyberKnife G4 System (estimated shipment date is July 31, 2006. Payment by Letter of Credit or T/T to Accuray Incorporated's bank account within five (5) business days after shipment. Accuray will provide a Bill of Lading to Hong Kong Adventist Hospital for payment purposes).
- $[*] due within 30 days of first patient treatment, or November 30, 2006, whichever occurs first, by Letter of Credit or T/T to Accuray Incorporated's bank account

2. *PMTC Commission.* Accuray and PMTC have agreed that PMTC will receive a commission on the HKAH sale in the amount of U.S. $[*], as set forth in the Commission Analysis attached hereto as Exhibit A ("Commission"). The Commission was determined by taking into account PMTC's anticipated margin on an equivalent sale, and the additional costs incurred by Accuray as a result of promises made by PMTC to HKAH in the Letter of Intent signed by PMTC and HKAH. PMTC's Commission will be paid according to the following schedule, which approximates the payment schedule in the HKAH Purchase Agreement:

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

2.1. Thirteen percent (13%) of the Commission, U.S. $[*], less the U.S. $50,000 already received by PMTC from HKAH upon signing the Letter of Intent, for a net payment of U.S. $[*], will be paid within thirty (30) days of signing this Agreement;

2.2. Eighty one percent (81%) of the Commission, or U.S. $[*], will be paid within thirty (30) days of receipt by Accuray of the full payment due upon shipment of the CyberKnife System to HKAH; and

2.3. Six percent (6%) of the Commission, or U.S. $[*], will be paid within thirty (30) days of receipt by Accuray of the full payment due following first patient treatment by HKAH.

3. *Marketing Assistance.* One of the additional items promised by PMTC to HKAH was U.S. $[*] in marketing assistance, particularly in support of the grand opening of the CyberKnife Center at HKAH. Accuray will provide marketing assistance to HKAH up to U.S. $[*], which amount has been deducted from PMTC's Commission.

4. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without PMTC's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

5. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:

Accuray Incorporated
Attention: CFO
1310 Chesapeake Terrace
Sunnyvale, CA 94089
U.S.A.

with cc to: General Counsel

To PMTC:

President Medical Technologies Co., Ltd. Inc.
Attention: General Manager
8F., No. 1, Guangfu S. Rd.
Taipei 105, Taiwan
Republic of China

6. *Disputes and Governing Laws*

6.1. In the event that a dispute arises between Accuray and PMTC with respect to the subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within thirty (30) days from the date of receipt of the claim document. The party filing the claim shall have an additional thirty (30) days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of PMTC. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

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6.2. All disputes under any contract concerning the subject matter governed by this Agreement, not otherwise resolved between Accuray and PMTC shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place. PMTC hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, this Agreement or the Inventories, may be brought by PMTC more than one (1) year after the cause of action has occurred.

7. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

8. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

9. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO or General Counsel.

10. *Entire Agreement.* This Agreement, in combination with the Distributor Agreement, contains the entire agreement between the parties hereto with respect to the subject matter herein, and supersedes all previous understandings, representations and warranties, agreements, written and oral, made and entered into by and among Accuray and PMTC in relation to the HKAH CyberKnife System.

11. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth below by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

Accuray Incorporated

By: /s/ Robert E. McNamara

Print Name: Robert E. McNamara

Title: SVP & CFO

Date: August 24, 2006

/s/ Darren Milliken August 23, 2006
Darren J. Milliken
General Counsel

President Medical Technologies Co., Ltd. Inc.

By: /s/ Huan Chiu Kuo

Print Name: Huan Chiu Kuo

Title: General Manager

Date: August 10, 2006

EXHIBIT A

PMTC's Commission Analysis

CYBERKNIFE SYSTEM PRICE	Part #	USD
CyberKnife G4	022986	$[*]
Xsight	22078	[*]
CyRIS InView	22086	$[*]
Additional CyRIS Multiplan	21695	$[*]
Installation		[*]
Sub-Total for System Price:		$[*]
ADDITIONAL ITEMS PROMISED IN LETTER OF INTENT		
A: Extended Warranty Cost:		**$[*]**
2nd year Emerald		
B: Downtime compensation:		$[*]
Six Calendar Months (in Emerald basis):		
C: Training Tuition and T&E Cost:		
Tuition for extra six (6) personnel:		$[*]
Air ticket (economic class) for eleven (11):		$[*]
Hotel Accommodation for eleven (11) each seven nights:		$[*]
Sub-Total for C:		**$[*]**
D: Shipment and Insurance		**$[*]**
Air-flight with insurance:		
E: Other Marketing Expenses		**$[*]**
Grand opening ceremony & MISC		
Sub-Total for Additional Items:		**$[*]**
Total Cost Incurred:		**$[*]**
System Price to HKAH:		**$[*]**
Commission to PMTC: System Price — Total Cost Incurred		**$[*]**
Less: Down payment on LOI received from HKAH		**$[*]**
Commission Still Owed to PMTC: Commission Less $50,000 LOI payment		**$[*]**

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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Exhibit 10.26

ACCURAY INCORPORATED
INTERNATIONAL DISTRIBUTOR AGREEMENT

This International Distributor Agreement ("the Agreement") is entered into by and between Accuray Incorporated, a Delaware corporation with its executive offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, USA, and Chiyoda Technol Corporation, a corporation organized under the laws of Japan, with its executive offices located at 1-7-12, Yushima, Bunkyo-ku, Tokyo 113-8681, Japan, as of , 2004 (the "**Effective Date**").

Accuray manufactures and sells full-body radiosurgery using image-guided robotics, including the CyberKnife, which is FDA approved 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 order to achieve its business objectives, Accuray relies on qualified distributors to market and distribute its products and services in different territories.

Accuray wishes to appoint Distributor as its exclusive distributor in Japan, subject to the terms and conditions of this Agreement and Distributor wishes to accept such appointment.

1. Definitions

1.1 **Accuray's Terms of Sale** means the current standard international transaction terms and conditions of sale prepared by Accuray from time to time and provided to Distributor.

1.2 **Customer** means any person or business entity lawfully doing business in the Territory with whom Distributor enters into an agreement for Products or Services. Customer does not include hospitals located on United States armed forces bases in the Territory.

1.3 **Products** means the CyberKnife System and related products manufactured by or for Accuray for use in the radiosurgery market and listed in **Exhibit A** attached to this Agreement, which have been approved for sale in the Territory.

1.4 **Project** means any activity or situation that includes a potential Customer or prospect that might be interested in acquiring Accuray's Products or Services.

1.5 **Proposal** means a document that offers to provide Products or Services to a prospective Customer.

1.6 **Purchase Order** means a document provided by Distributor to Accuray that sets forth in adequate detail, including specifications and delivery schedule, the Products or Services ordered.

1.7 **Services** means the performance of radiosurgery-related services by either Accuray or Distributor, which may include technical support, training or installation of Products, as listed in **Exhibit A.**

1.8 **Specification** means the current written description of a Product or Service prepared by Accuray and provided to Distributor.

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

1.9 **Territory** means Japan.

1.10 **Transitional Customers** means those Customers listed in **Exhibit E** who currently have agreements with Meditec Corporation either (i) who have entered into a new agreement with Distributor or (ii) whose existing contracts with Meditec Corporation have been assigned to Distributor pursuant to a separate agreement between Meditec Corporation and Distributor as contemplated by **Section 3.8**, below.

2. Duties of Accuray

2.1 **Status**. Accuray is responsible for ensuring that the Products supplied are of good quality as further described below.

2.2 **Exclusive Distributor**. Accuray hereby appoints Distributor as the exclusive distributor of Products and Services to Customer in the Territory, subject to the terms and conditions of this Agreement. So long as Distributor achieves the volume of business set forth below and otherwise meets its obligations under this Agreement, Distributor shall be the exclusive distributor of Products and Services to Customer in the Territory.

2.3 **Products and Services**. Accuray will use commercially reasonable efforts to provide timely to Distributor those Products and Services required to fill orders received from Distributor in accordance with the terms of this Agreement.

2.4 **Product and Service Pricing**. Accuray will provide Product and Service pricing to Distributor from time to time during the Term of this Agreement. Products and Services shall be priced by Accuray to Distributor in accordance with Accuray's price list in effect from time to time, provided that Accuray will not increase the pricing of any Product or Service before December 31, 2005 (approximately two years) unless there has been a configuration change or an expansion of the, approved clinical indications, but, in any case, no change can be made without six months' prior written notice to Distributor. The current prices, as of the Effective Date, of Accuray's Products and Services are listed on **Exhibit A**. All prices will be stated in US Dollars.

2.5 **Product Specifications and Promotional Literature**. Accuray will provide product specifications and promotional literature to Distributor from time to time during the Term of this Agreement. Distributor may use product specifications and promotional literature in Distributor's dealings with Customers. Accuray may introduce changes and upgrades to the Products. Accuray will be responsible for ensuring that any changes or upgrades to the Products comply with the latest regulatory approvals, and will use commercially reasonable efforts to give Distributor as much advance notice of upgrades as is feasible.

2.6 **Shonin**. Accuray will be responsible for obtaining the Shonin from the Japanese MHLW for the CyberKnife II system (as specified in the Shonin application, which may be updated as necessary) for head and neck applications, and for any changes or upgrades to the Products. Accuray will be responsible for (i) managing and paying for any paperwork associated with obtaining the Shonin; (ii) the costs of seeking approval for expanded usage of the CyberKnife II system and other Products; (iii) timely application for all upgrades that Accuray determines are commercially appropriate; and (iv) maintaining the Shonin, all with the reasonable assistance of Distributor. At Distributor's request, Accuray will provide Distributor an update of all Shonin-related activities at any time the Shonin is changed and up to two (2) additional times a year. Accuray shall reimburse Distributor only for those Shonin-related expense incurred in connection with such assistance that have been pre-approved in writing by Accuray.

2.7 **Warranty**. Accuray will provide a warranty that the Products will be free from defects and perform substantially in accordance with the Specifications as reflected in the Shonin at the time of sale for a period of one year following installation of the Product at Customer's facility, but not to exceed eighteen (18) months following shipment of such Product to Distributor. Accuray makes no warranty that the operation of any software will be uninterrupted or error-free. Except as set forth in the preceding sentences, Accuray makes no warranties or representations to Distributor or to any other party regarding any Products or Services provided by Accuray. To the fullest extent permitted by applicable law, Accuray disclaims all other warranties and representations, whether express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose or non-infringement, and any warranties arising out of course of dealing or usage of trade.

2.8 **Support**. Accuray will provide Distributor the following types of support:

2.8.1 **Hardware**. During the warranty period, Accuray will provide replacement of defective parts. This will be Accuray's sole and exclusive obligation. Accuray shall not be responsible for the installation and labor costs for such replacement parts.

2.8.2 **Hardware Parts Inventory**. Accuray will maintain an inventory of spare parts for the Products in the Territory.

2.8.3 **Software**. During the warranty period, Accuray will provide error corrections or "bug fixes." This will be Accuray's sole and exclusive obligation. Additionally, Accuray shall provide Distributor with any and all applicable error corrections and bug fixes generally provided by Accuray to Accuray customers with similar Product installations.

2.8.4 **Warranty Exclusions**. All warranty replacement of parts shall be limited to malfunctions which are due and traceable to defects in original material or workmanship of Products. The warranties set forth in this **Section 2** shall be void and of no further effect in the event of abuse, accident, alteration, misuse or neglect of Products, including but not limited to user modification of the operating environment specified by Accuray and user modification of any software.

2.8.5 **Software Service Upgrades**. After the warranty period and subject to Distributor's mandatory purchase, pursuant to **Section 3.15**, below, of an annual software service upgrade package as more fully described in **Exhibit A**. Depending on the annual service upgrade package purchased by Distributor, such software service upgrades may include new features.

2.9 **Training**. Accuray will provide training to Distributor and, as applicable, to certain Transitional Customers, in accordance with **Exhibit C.**

2.10 **Clinical Trials**. Accuray and Distributor will work together to determine if clinical trials are necessary for the regulatory approval of further CyberKnife applications or Products. If they determine that clinical trials are necessary, Accuray and Distributor will work together to design and conduct those trials. Accuray will bear the incremental cost of the clinical trials, as well as the cost of submitting for regulatory approval. Notwithstanding the foregoing, Accuray shall not reimburse Distributor for any expense incurred in connection with clinical trials or regulatory approval not pre-approved in writing by Accuray. At Accuray's request, Distributor will provide Accuray with receipts and other documentation for all such expenses. Accuray shall not be responsible for Distributor's internal and existing resources for such activities.

2.11 **Public Relations**. Accuray and Distributor will work together to design a public relations program.

2.12 **Compliance with Laws**. Accuray will be responsible for complying with U.S. laws and with Japanese laws as they pertain to the Product and the Shonin. Upon notification by Distributor of any impending changes to Japanese laws or regulatory requirements that may necessitate modifications in the Products or Services, Accuray shall respond to such notifications in a timely manner and make necessary efforts to ensure continued compliance.

3. Duties of Distributor

3.1 **Status**. Distributor shall be and must at all times make it clear that it is an independent entity contracting with Accuray, and is not the employee, representative or agent of Accuray. Distributor does not have the ability or authority to enter into any legal agreements or obligations that would bind Accuray in any manner. Distributor represents that it is involved in other businesses, not competitive with its activities under this Agreement but of sufficient volume and profitability that Distributor is in no way dependent upon this Agreement or its relationship with Accuray for its continuing viability or success.

3.2 **Training**. Distributor will provide training to Customer in accordance with **Exhibit C.**

3.3 **Market Knowledge, Promotion and Sales**. Distributor represents that it has a thorough knowledge of the Territory, the market for radiosurgery products and of all current and proposed Projects. Distributor will develop a thorough and complete understanding of the Products and Services. Distributor will use its knowledge and understanding to develop potential Projects.

3.3.1 Distributor will use best efforts to promote the sale of and to sell Products and Services to Customers in accordance with Accuray's marketing guidance and policies in effect from time to time and will make best efforts to learn of any potential Project. Distributor will make itself familiar with each such Project so as to learn all conditions of the Project which may impact the Products or Services to be offered. In addition, as Accuray releases new features and Products, Distributor will use best efforts to promote the sale of and to sell those features and Products to the installed base of Products and to new Customers in the Territory.

3.3.2 Distributor sales and marketing staff will actively participate in the following activities: American Society of Therapeutic Radiology & Oncology (ASTRO); American Association of Neurological Surgeons (AANS); **Accuray** worldwide users' meeting; and **Accuray** worldwide sales meetings. Active participation includes attendance at and participation in such meetings.

3.3.3 Distributor will report to Accuray any proposed or pending Projects outside the Territory about which Distributor learns during the Term of this Agreement.

3.4 **Shonin Assistance**. Distributor will give assistance where reasonable or requested by Accuray in connection with Accuray's activities related to obtaining and maintaining the Shonin. Notwithstanding the foregoing, Accuray shall not reimburse Distributor for any Shonin-related expense incurred in connection with such assistance not pre-approved in writing by Accuray. At Accuray's request, Distributor will provide Accuray with receipts and other documentation for all such expenses. Accuray shall not be responsible for Distributor's internal administrative personnel or resources for such activities.

3.5 **Import License**. Distributor will obtain and maintain the required import license.

3.6 **Distributor Personnel.**

3.6.1 **Full-Time, Dedicated Personnel**: Distributor will provide full-time, dedicated personnel that will include a general manager, a senior product manager and support staff, five to

six senior sales people with sufficient skill, training and experience to be effectively capable of selling a $4 million product, and two clinical support or training specialists. These personnel will be full-time, one hundred percent (100%) dedicated to the business relating to Accuray's Products and Services and will have adequate backgrounds in surgical and/or radiation oncology products and services, experience and training to perform the following functions:

3.6.1.1 Sales, sales management, sales forecasting, and order management;

3.6.1.2 Marketing throughout the Territory;

3.6.1.3 Planning for the installation and installing Products;

3.6.1.4 Clinical trials, regulatory compliance, and reimbursement;

3.6.1.5 Product management;

3.6.1.6 Development of on-site training as described in **Exhibit C**;

3.6.1.7 Provision of Services; and

3.6.1.8 Field service.

3.6.2 **Other Personnel**: Distributor will also provide adequate technical support staff for the operation and maintenance of the Products and Services.

3.7 Section deleted.

3.8 **Installing Existing Meditec Sites**. Meditec currently has [*] ([*]) existing contracts with Customers, as listed in **Exhibit E**. Accuray understands that Meditec and Distributor are currently negotiating the terms to transfer or assignment of such Customers' agreements to Distributor (at which point they will become Transitional Customers).

3.8.1 **Transition Customer Contract Reports**: Distributor will inform Accuray of the terms of any agreements it enters into with or regarding each Transitional Customer.

3.8.2 **Installation Assistance**: Once such Customers have been transferred or assigned from Meditec to Distributor, Distributor will be responsible for installing the Product at the Transitional Customer's sites and will engage ATC and, as necessary, Accuray to perform the installations. Distributor will pay Accuray for such services.

3.8.3 **Installation Reimbursement**: Accuray understands that Distributor and Meditec are negotiating the level of reimbursement from Meditec for the cost of installation services, including importation, radiation protection calculations, first year warranty labor, and a transfer fee, as necessary.

3.8.4 **Acceptance and Release**: Once such Customers have been transferred or assigned from Meditec to Distributor, Distributor, with assistance from Meditec, will obtain appropriate acceptance and release documentation from each Transitional Customer following installation, which will list any further commitments that are outstanding.

3.8.5 **Upgrades**: Pursuant to Paragraph 3 of the December 10, 2003, Letter Agreement between Accuray and Meditec, Meditec has agreed to satisfy any further commitments that are based on previous agreements between the Transitional Customer and Meditec, which may include the delivery to Transitional Customers by Accuray of additional Product capabilities, if and when regulatory approval is received.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

3.9 **Additional Meditec Inventory**. Meditec has purchased and has in inventory additional Products ("**Meditec Inventory**") apart from the Transitional Customer systems referred to above. Distributor will purchase Meditec Inventory, unless prohibited by law from doing so, to satisfy Customer demand. Notwithstanding the preceding sentence, Distributor will fulfill its minimum volume of Orders and Purchase Orders set forth in Section 3.13 below.

3.9.1 If Meditec has an upgraded (in compliance with the current Shonin) system in its inventory, to satisfy Distributor's sales demand, Distributor will order a system from Meditec. Distributor's purchase price for such systems will be $[*].

3.9.2 Distributor shall enter into an Agreement with Meditec determining the level of reimbursement from Meditec for the cost of installation services, including importation, radiation protection calculations, first year warranty labor, and a transfer fee, as necessary, for such Meditec Inventory.

3.9.3 Distributor will provide training to these Customers as provided in **Exhibit C**.

3.10 **Proposals**. Distributor will submit a timely Proposal on every Project in the Territory during the Term of this Agreement. All Proposals shall be prepared and submitted to the Customer by Distributor. Proposals will offer only Products or Services described in current Specifications, and only in accordance with this Agreement. Unless Distributor has prior written consent from Accuray to the contrary, all Proposals submitted by Distributor are (and Distributor must inform the Customer that they are) subject to change in the event Accuray's Terms of Sale or Specifications change prior to the time Distributor accepts an Order from the Customer (if it does). The accuracy and cost of any translation of Accuray materials, which may be required for a particular Customer, shall be the responsibility of Distributor.

3.11 **Orders**. Distributor will receive each Order placed by a Customer to which Distributor has submitted a Proposal. Orders may be accepted only by Distributor. The resulting contract for the sale of Products and Services shall be between Distributor and the Customer. In the case of a Product, Distributor must send a Purchase Order to Accuray at least six months prior to the expected shipment date. With regards to the systems listed in **Exhibit B**, this Agreement constitutes a Purchase Order. All Products must be purchased from Accuray unless otherwise specified in this Agreement or agreed in writing by Accuray.

3.12 **Payment**. Terms of payment for all Products and Services ordered by Distributor from Accuray shall be net thirty (30) days from the date of shipment or service unless otherwise agreed. Accuray will bear the cost of any commission charge for a wire transfer. Distributor will pay a late charge of two percent (2%) on any balance that becomes overdue, plus interest at the rate of one percent (1%) per month or the highest interest rate allowed by law, whichever is greater, until paid. Payment for Products and Services shall be made in US Dollars by Distributor to Accuray by wire transfer or, at Accuray's election, in the form of irrevocable trade finance letter of credit issued by Distributor's bank, confirmed by a bank which is doing business in the State of California, United States of America, in all respects acceptable to Accuray, and delivered to Accuray with the Purchase Order. Payment for a CyberKnife will be made according to the following schedule:

3.12.1 $[*] six (6) months prior to the expected date of shipment of an Order/Purchase Order, or date of shipment as specified in **Exhibit B**;

3.12.2 $[*] within thirty (30) days following shipment of the CyberKnife to Distributor, and,

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

3.12.3 The remaining balance ninety (90) days after shipment of the CyberKnife.

3.13 **Volume of Business**. Accuray and Distributor have reviewed and discussed the Territory in detail and have agreed that Distributor will meet the minimum volume of Orders and Purchase Orders set forth in **Exhibit B** attached to this Agreement. If Distributor does not make the minimum purchases set forth in **Exhibit B**, or does not pay timely (within sixty (60) days of the due date) for those purchases, Accuray may, at its sole determination and in its sole and complete discretion, elect to make this distribution arrangement non-exclusive.

3.14 **Forecast**. In order to support Accuray's production planning, at least every six months during the Term of this Agreement, Distributor will provide Accuray an eighteen (18) month rolling forecast of: targeted Customers, contracted Customers and forecast of Product sales by product line.

3.15 **Software Service Upgrades**. Distributor must purchase annual service upgrade packages from Accuray for each Customer and each Transitional Customer. Distributor may choose between (i) the Service Upgrade package and (ii) the Gold Service Contract, each of which is described in **Exhibit A.**

3.16 **Customer Support**. Distributor will support Accuray's training of new Customer personnel, and will send new Customer users for training at Accuray, in accordance to and at the prices listed in **Exhibit C**. Distributor will provide guidance to billing and reimbursement personnel of each Customer regarding regulatory and billing requirements and reimbursement for treatment provided with Products under applicable radiosurgical reimbursement codes applicable within the Territory, Distributor will be responsible for ensuring that its personnel maintain their proficiency with respect to the Products and all upgrades, enhancements and new feature releases, and will send its personnel to Accuray for training as necessary.

3.17 **Customer Relations**. Distributor shall deliver Products and Services to Customers in the Territory, shall report promptly to Accuray any complaints or expressions of dissatisfaction by the Customer relating to the Products or Services. While Distributor shall have no authority to offer on behalf of Accuray anything in settlement of any such complaints or expressions, Distributor shall use all best efforts to satisfy the Customer that the Products and Services meet the applicable Specifications, Proposal, and Order, if such is the case.

3.18 **Installation**. Distributor will be responsible for providing installation for any Product a Customer purchases.

3.19 **Warranty**. Distributor will be responsible for providing a one (1) year warranty (for parts and service) for each Product a Customer purchases. Distributor will not make any other warranties or representations in Accuray's name or on Accuray's behalf.

3.19.1 **Extended Parts Warranty**. Distributor may include Accuray Extended Parts Warranty as an option for Customer in all service packages. Accuray's Extended Parts Warranty is detailed in **Exhibit A.**

3.20 **Field Service**. Distributor will provide to all Customers, remotely and on-site when needed, routine maintenance and service and timely response to special requests for service of all installed Products in the Territory.

3.21 **Hardware Parts Inventory**. Distributor will provide rent-free space for Accuray to maintain its hardware parts inventory of spare parts. At Accuray's request, Distributor will manage the inventory for a fee to be determined and Distributor may invoice Accuray for this service.

3.22 **Records and Reports.**

3.22.1 **Reports**. Within thirty (30) days after the end of each quarter, Distributor will provide Accuray with a written report that includes: (i) Distributor's sales and shipments of each Product for that quarter, by dollar or yen volume and number of units, both in the aggregate and for such categories as Accuray may designate from time to time; (ii) service reports detailing all uptime and parts warranty issues; and (iii) any other information requested by Accuray, Distributor's report will comply in form and substance with Accuray's reporting requirements, as they are determined by Accuray and communicated to Distributor from time to time.

3.22.2 **Notification**. Distributor will promptly notify Accuray of any: (i) claim or proceeding involving the Products; or (ii) claimed or suspected Product defects.

3.22.3 **Records**. During the term of this Agreement and for a period of three (3) years after any termination or expiration thereof, Distributor will maintain complete and accurate books, records and accounts relating to the distribution of the Products, and will permit Accuray's authorized representatives to examine them on reasonable prior notice.

3.23 **Compliance with Laws.**

3.23.1 **Within the Territory**. When Products are being shipped to Distributor, unless the particular Order provides otherwise, Distributor shall be responsible for all import duties and other import, licensing and immigration formalities which must be complied with in order for the Products to be lawfully imported into the Territory or the Services to be lawfully performed in the Territory. Although Accuray will retain regulatory responsibility for the Shonin, compliance with all other laws and regulations are the responsibility of Distributor. Distributor will notify Accuray of any impending changes to Japanese laws or regulatory requirements that pertain to, and may necessitate modifications to, the Products or Services.

3.23.2 **United States laws**. Distributor understands that, because it is distributing the Products and Services of Accuray, a company subject to the laws of the United States of America, Distributor must, when carrying out its duties under this Agreement, avoid violations of certain of such laws. These include, but are not necessarily limited to, the following:

3.23.2.1 **Restrictive Trade Practices or Boycotts**, U.S. Code of Federal Regulations Title 15, Chapter VII, Part 760.

3.23.2.2 **Foreign Corrupt Practices Act**, U.S. Code Title 15, § 78.

3.23.2.3 **Export Controls**, imposed by U.S. Executive Order or implementing regulations of the U.S. Departments of Commerce, Defense or Treasury.

3.24 **Translations**. To the extent it deems necessary, Distributor may, at its option and expense, translate or localize any product specifications and promotional literature Accuray has provided to Distributor, provided that Accuray has reviewed and given Distributor written approval for each such translation prior to its use or distribution to Customers.

3.25 **Insurance**. Distributor shall obtain and keep in full force and effect during the Term of this Agreement (and thereafter until all Projects as to which Accuray has accepted an order from Distributor have been completed) general and products liability and workers' compensation insurance on an occurrence basis with coverage limits (i) in the normal and customary business of a medical device distributor and (ii) sufficient to provide coverage of any claim which may reasonably arise out of the actions or inactions of that party related to this Agreement or the business relationship between the parties. Distributor shall provide to

Accuray from time to time while its obligation under this paragraph is in effect certificates evidencing such insurance, which certificates shall expressly provide that the underlying coverage cannot be cancelled without at least thirty (30) days' written notice to Accuray.

3.26 **Competing Products.**

3.26.1 During the Term of this Agreement, Distributor will not, with respect to Customers located or having Projects in the Territory, sell, offer for sale, promote the sale of, distribute or represent in any way products or services which are competitive with the Products or Services.

3.26.2 By April 30, 2004, until the termination of this Agreement, Distributor agrees that it will cease (i) assisting Elekta with any Elekta Products, (ii) selling Electa products and (iii) servicing Elekta products. Elekta products include, but are not limited to, the Gamma Knife.

4. Compensation and Payment

4.1 **Compensation**. Except as otherwise provided herein, Distributor's only compensation for its efforts on Accuray's behalf shall be the margins it earns on the resale of Products and Services, and Distributor shall bear all of the expenses which it incurs in making those efforts.

4.2 **Payment**. Distributor shall be solely responsible for determining the creditworthiness of and collecting payment from its Customers. The risk of non-collection from the Customer will be borne entirely by Distributor, which shall be responsible for making timely payment to Accuray for Products and Services whether or not Distributor is successful in collecting from its Customer.

5. Term and Termination

5.1 **Term**. The Term of this Agreement shall begin on the Effective Date and continue until December 31, 2006, unless extended or sooner terminated in accordance with this **Section 5.**

5.2 **Renewal**. This Agreement will be renewed for additional one-year periods, at the option of Distributor, if Distributor has carried out its duties under this Agreement, including meeting the minimum volume of purchases and shipments set forth in **Exhibit B**, as updated in accordance with the following. Accuray and Distributor will meet approximately one hundred eighty (180) days prior to the termination date and agree upon a Volume of Business, a number of Customer orders, and any other terms, for the subsequent renewal period. It is anticipated that the Volume of Business and number of Customer orders for 2006 shall be for no more than [*] ([*]) CyberKnife systems and no less than [*] ([*]) systems. Thereafter, the Volume of Business and number of Customer orders for each subsequent renewal year shall reflect an increase in units over the numbers determined for the previous year. Either party may terminate this Agreement at the end, or following the end, of the second renewal year with one hundred eighty (180) days prior written notice to the other party.

5.3 **Termination for Cause**. Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure it within thirty days after written notice of the breach is given by the other party, provided that, as to a breach which cannot be fully cured within thirty days, that breach shall be deemed timely cured if the cure is commenced immediately upon receipt of notice of it from the other party and pursued diligently to completion. The effective date of termination shall be the date of expiration of the cure period without a cure having occurred.

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[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

5.4 **Termination Without Cause**. Either party may terminate this agreement with twelve (12) months prior written notice to the other party. Each party shall diligently pursue its obligations under this Agreement until the date of termination.

5.5 **Accruals**. No termination of this Agreement will terminate any obligation of payment which has accrued prior to the effective date of such termination.

5.6 **Termination Transition Assistance**. Immediately following termination, Distributor shall transfer to Accuray: Accuray's parts inventory; any license or permit obtained for conduct of the business in Japan; any Confidential Information and other items as will be negotiated in good faith between the parties. Furthermore, the parties agree to cooperate fully with the other for any reasonable transition assistance required in the case of termination or expiration of this Agreement.

5.7 **No Termination Compensation**. Distributor waives any rights it may have to receive any compensation or indemnity upon termination or expiration of this Agreement, other than as expressly provided in this Agreement. Distributor acknowledges that it has no expectation and has received no assurances that any investment by Distributor in the promotion of the Products will be recovered or recouped or that Distributor will obtain any anticipated amount of profits by virtue of this Agreement.

6. Dispute Resolution

6.1 **Applicable law**. This Agreement shall be subject to and controlled by the laws of the State of California, not including either the choice of law/conflict of laws rules of California or international treaties (such as the U.N. Convention on Contracts for the International Sale of Goods) which would otherwise be applicable in California.

6.2 **Notification and Discussion**. Accuray and Distributor hereby irrevocably and unconditionally agree as follows: Should any dispute arise between the parties relating to this Agreement or the business relationship between the parties, such dispute shall be submitted by one or both parties, in writing, to the Chief Executive Officer of Distributor and Accuray's President (the "Principal Officers") for resolution. The parties shall attempt to resolve any dispute arising out of relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy.

6.3 **Process**. Any controversy, claim or dispute arising out of or relating to this Agreement, including without limitation, the construction, interpretation, validity, enforcement, performance, lack or failure of performance or breach of this Agreement, or the rights, duties or liabilities of a party under this Agreement, that cannot be resolved by agreement of the parties within fifteen (15) days of the matter being raised, and either party wishes to pursue the matter, the controversy, claim or dispute shall be referred to further dispute resolution processes in accordance with **Exhibit F.**

6.4 **Confidential Information**. Any breach of Accuray Intellectual property or confidential information as described in **Section 7** below or related obligations of this Agreement will cause Accuray irreparable harm for which money damages shall be an inadequate remedy and difficult to ascertain. Consequently, notwithstanding anything else in this Agreement to the contrary, in the event of any such threatened or actual breach, Accuray will be entitled to seek equitable relief in any court having jurisdiction on any claim based upon the actual or imminent misuse or unauthorized disclosure of Accuray intellectual property or confidential information, including preliminary injunctions restraining such breach and specific performance of Distributor's obligations and covenants in such sections. Such equitable relief shall be in addition, and without prejudice, to any other remedies available to Accuray at law

or under this Agreement for any such breach or threatened breach. If Accuray seeks injunctive relief, such action shall not constitute a waiver of the provisions of this Agreement to arbitrate, which shall continue to govern any and every dispute between the parties including, without limitation, the right of damages, permanent injunctive relief, and any other remedy at law or in equity.

7. Confidentiality.

7.1 **Definition**. "Confidential Information" means: (i) any non-public,information of a party, including, without limitation, any information relating to a party's current and planned products and services, technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) any other information of a party that is disclosed in writing and is conspicuously designated as 'Confidential" at the time of disclosure or that is disclosed orally, is identified as "Confidential" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure; and (iii) the specific terms and pricing set forth in this Agreement.

7.2 **Exclusions**. The obligations in **Section 7.3** will not apply to the extent any information: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

7.3 **Obligations**. Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all commercially reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and Importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

8. Indemnities.

8.1 **Accuray Indemnity**. Accuray will defend or settle any action brought against Distributor to the extent that it is based upon a third-party claim that a Product, as provided by Accuray to Distributor under this Agreement, infringes any United States patent or any copyright or misappropriates any trade secret, and will pay any costs and damages made in settlement or awarded against Distributor in final judgment resulting from any such claim, provided that Distributor: (i) gives Accuray prompt notice of any such claim; (ii) gives Accuray sole control of the defense and any related settlement of any such claim; and (iii) gives Accuray, at

Accuray's expense, all reasonable information, assistance and authority in connection with the foregoing. Accuray will not be bound by any settlement or compromise that Distributor enters into without Accuray's express prior consent.

8.2 **Injunctions**. If Distributor's rights to use and distribute a Product under the terms of this Agreement is, or in Accuray's opinion is likely to be, enjoined due to the type of claim specified in **Section 8.1**, then Accuray may, at its sole option and expense: (i) procure for Distributor the right to continue to use and distribute such Product under the terms of this Agreement; (ii) replace or modify such Product so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite Accuray's reasonable efforts, then Accuray may terminate Distributor's rights and Accuray's obligations hereunder with respect to such Product and credit to Distributor the amounts paid for such Product during the twelve (12) months prior to the date Accuray issues such a credit, provided that all units of such Product are returned to Accuray in an undamaged condition.

8.3 **Indemnity Exclusions**. Accuray will have no obligation under **Sections 8.1** or **8.2** for any claim of infringement or misappropriation to the extent that it results from: (i) the combination, operation or use of a Product with or in equipment, products, or processes not provided by Accuray; (ii) modifications to a Product not made by or for Accuray; (iii) Distributor's failure to use updated or modified Products provided by Accuray; (iv) Distributor's use or distribution of a Product other than in accordance with this Agreement or (v) Distributors contracts with other manufacturers, including Elekta and manufacturers of products and services that compete with Accuray. The foregoing clauses (i) to (v) are referred to collectively as *"**Indemnity Exclusions**"*.

8.4 **Limitation**. THE FOREGOING PROVISIONS OF THIS **SECTION 8** SET FORTH ACCURAY'S SOLE AND EXCLUSIVE LIABILITY AND DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND.

8.5 **Distributor Indemnity**. Distributor will defend or settle, indemnify and hold Accuray harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) Distributor acts or omissions; (ii) any misrepresentations made by Distributor with respect to Accuray or the Products or Services; or (iii) an Indemnity Exclusion.

9. Liability.

9.1 **Exclusion of Certain Damages**. IN NO EVENT WILL ACCURAY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOSS OF USE, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL), OR FOR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY ACCURAY PRODUCTS OR SERVICES PROVIDED BY ACCURAY, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT ACCURAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED

REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9.2 **Total Liability**. ACCURAY'S TOTAL LIABILITY TO DISTRIBUTOR UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM DISTRIBUTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE A CLAIM FOR LIABILITY ARISES HEREUNDER

9.3 **Basis of Bargain**. The parties expressly acknowledge and agree that Accuray has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Accuray and Distributor and form an essential basis of the bargain between the parties.

10. Miscellaneous Provisions

10.1 **Publicity**. Distributor may not use Accuray's name or trademarks on its literature, signs, or letterhead, nor may it make press releases or other public statements disclosing its relationship with Accuray under this Agreement or otherwise without the prior written consent of Accuray.

10.2 **Titles**. Titles of the various paragraphs and sections of this Agreement are for ease of reference only and are not intended to change or limit the language contained in those paragraphs and sections.

10.3 **Writing**. It is the intention of the parties that this written Agreement contains the entire agreement between them. No addition to or amendment of this Agreement shall have any effect unless it is also in writing and, with the exception of those matters which Accuray is expressly permitted to change from time to time during the Term of this Agreement (such as Pricing, Terms of Sale, etc.), shall only be valid if signed by the duly authorized officers of both parties.

Signatures:

DISTRIBUTOR:		**ACCURAY INCOROPRATED:**	
By:	/s/ Toshikazu Hosoda	By:	/s/ Euan S. Thomson
Typed Name:	Toshikazu Hosoda	Typed Name:	Euan S. Thomson
Title:	President and CEO	Title:	President and CEO
Date:	21 Jan. 2004	Date:	21 Jan. 2004

[SIGNATURE PAGE TO THE ACCURAY INCORPORATED
INTERNATIONAL DISTRIBUTOR AGREEMENT]

Exhibit A

PRODUCTS AND SERVICES (INCLUDING CURRENT PRICING)

This Exhibit may be updated from time to time

(*) The price of the service upgrade package is subject to further negotiation and will be determined by mutual agreement within thirty (30) days of the signature date of this Agreement.

(**) The price of the High Throughput upgrade package, including Modified Linac output (400 MU/min), is subject to further negotiation, but will not be less than $[*], and will be determined by mutual agreement within thirty (30) days of the signature date of this Agreement.

Qty	Product Description	Chiyoda Transfer Price
	CyberKnife II	$[*]
	Robot	Incl.
1	Robot Manipulator	Incl.
1	Robot Control Unit	Incl.
	Linac	
1	Compact 6MV Linac (300 cGy/min)	Incl.
1	Secondary Collimator Kit — 5mm, 7.5 mm, 10 mm, 12.5 15 mm, 20 mm, 25 mm, 30 mm, 35 mm, 40 mm, 50 mm, 60 mm, Blank	Incl.
1	Chiller Rack Mount	Incl.
1	EPO Op Console	Incl.
	Couch	
1	5 Axis Motorized Treatment Couch (Low)	Incl.
1	Couch Hand Controller	Incl.
1	Tabletop Mattress	Incl.
	Imaging System	
2	Imaging Stands (Low)	Incl.
2	Amorphous Silicon Detectors	Incl.
2	X-ray Generators	Incl.
2	X-Ray Sources	Incl.
1	TLS PC	Incl.
1	TDS Software	Incl.
	Sub-system Controls	

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

1	Power Distribution Unit	Incl.
1	Interface Control Chassis	Incl.
1	Control Modulator MCC	Incl.
1	ESCC Control Chassis	Incl.
1	TLSCC	Incl.
1	Equipment Rack	Incl.
1	PC Monitor	Incl.
1	Keyboard & Mouse	Incl.
1	3-way KVM Switch	Incl.
	CyberKnife Software System	
1	Treatment Delivery Software License	Incl.
1	Cranial treatment Skull Tracking	Incl.
1	Treatment Planning Software License	Incl.
	Hardware Components	Incl.
1	Serial Port Server	Incl.
1	*SGI Octane II Workstation (Primary)* *Dual R12000A 400MHz/2MB cache* *512 MB Memory* *18 GB 10,000 RPM System Disk* *21" Color Monitor VGA — Flat Trinitron Tilt/Swivel* *DAT20-INT Internal 4mm SCSI Tape, 20GB — Patient Data Archive/Restore* *40x SCSI CD-ROM Drive* *IRIX Operating System* *Mouse and Keyboard* *Power Cords*	Incl.
1	SMART UPS	Incl.
1	*SGI Octane II Workstation (Primary)* *Dual R12000A 400MHz/2MB cache* *512 MB Memory* *18 GB 10,000 RPM System Disk* *21" Color Monitor VGA — Flat Trinitron Tilt/Swivel* *DAT20-INT Internal 4mm SCSI Tape, 20GB — Patient Data Archive/Restore* *40x SCSI CD-ROM Drive* *IRIX Operating System* *Mouse and Keyboard* *Power Cords*	Incl.
	Manuals and IFU's	Incl.
1	CyberKnife II System Manuals & CD's	Incl.
1	Kuka Manipulator System Manuals	Incl.
1	Chiller Manual	Incl.
1	X-ray Detector Manuals	Incl.
1	Accuray 6MEV Medical X-ray CD	Incl.
1	X-Ray Generator Manual	Incl.
1	Couch	Incl.

	QA Tools		Incl.
1	Anthro 6D Head Phanton		Incl.
1	Ball Cube		Incl.
1	Pre-notched Dosimetry Film (20 Pieces)		Incl.
1	QA Calibration Tool		Incl.
1	Pinhole Collimator Align Tool		Incl.
1	Digital Level ($^{1}/_{10}$ degree)		Incl.
1	Ion Chamber Test Fixture		Incl.
1	Assy ISO Post		Incl.
1	Alignment Ball		Incl.
1	Pointer Calibration & Front Pointer		Incl.
	Team Training		
1	Technical & Clinical 5 persons (offered by CT)		
1	Onsite Training (offered by CT)		
1	Basic Physics and QA (offered by CT)		
	Installation Kit		Incl.
1	8' Ladder		Incl.
1	Wrench allen Set		Incl.
	Miscellaneous Components		Incl.
1	Color Laser Printer		Incl.
	CK II Options		
	Service Upgrade Package (annual)	**(*)**	not incl.
1	Software diagnostic improvements, improved mathematical modeling, improved algorithms, bug-fixes, error corrections and Other service enhancements. No new features		
	Gold Service Contract Package (software purchase contract; annual)	$[*]	Not incl.
1	One new software package / year (i) Transitional Customers are entitled to all software Upgrades that are available for installation in the Territory During the Term. (ii) For Transitional Customers, the Gold Service Contract is effective for (4) years commencing on the Installation completion date. (iii) Payments are due annually, in advance.		
	High Throughput (hardware + software)	(**)	
1	Modified Linac output (400 MU/min)		not incl.
1	Express Software Module		Incl./w/Gold

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

	Service Items		not incl.
1	Extended Parts Warranty per year (Provides all parts for field service and maintenance, payable quarterly in advance. This pricing is based on twenty (20) Customers committing to this program. If less than twenty (20) Customers commit, Accuray reserves the right to increase the price or cancel the program.)	¥ [*]	not incl.
	Additional Treatment Planning Station	$[*]	not incl.
	1 Treatment Planning Software License Dual R12000A 400MHz/2MB cache 512 MB Memory 18 GB 10,000 RPM System Disk 21" Color Monitor VGA — Flat Trinitron Tilt/Swivel DAT20-INT Internal 4mm SCSI Tape, 20GB — Patient Data Archive/Restore 40x SCSI CD-ROM Drive IRIX Operating System Power Cords		
	Additional Computer Items		not incl.
1	Additional 73 Gbyte Hard Disk (upgrade)	$[*]	not incl.
1	21" flat panel LCD monitor (upgrade	$[*]	not incl.
1	Cable Kit Add Octane to Hub	$[*]	not incl.
1	SGI 36 Gig Hard drive	$[*]	not incl.
1	SGI 18 Gig Hard drive	$[*]	not incl.
1	SGI Memory, 512MB	$[*]	not incl.
	Additional Hardware Items		not incl.
1	Headrest w/Medtec mask (GE)	$[*]	not incl.
1	CT adapter — GE Lightspeed (no HDR)	$[*]	not incl.
1	CT adapter w/HDR — Siemens	$[*]	not incl.
1	Headrest w/ Medtec mask	$[*]	not incl.
1	**Additional QA Items**		not incl.
1	Alignment Jig 6D — 20cm	$[*]	not incl.
1	Head Phantom Kit (contains ball cube)	$[*]	not incl.
1	Gas Chromic Film (20 pack)	$[*]	not incl.
1	Film Ball cube (20 pack)	$[*]	not incl.

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Exhibit B

PRODUCT AND SERVICE MINIMUM VOLUMES

In addition to Meditec Orders, Distributor agrees to purchase, at a minimum, during the initial term of the contract ending December 31, 2006, and Accuray shall ship [*] CyberKnife systems on the dates specified:

[*] (***)
[*] (***)
[*]
[*]
[*]

(***) The dates of shipment of the first [*] systems are subject to final negotiation and will be determined by mutual agreement within thirty (30) days of the signature date of this Agreement.

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Exhibit C

TRAINING

Phase	Details	Accuray Training Obligations	Distributor Training Obligations

Phase 1:
 	
Upgrade Training
(current Meditec customers to be reinstalled and upgrade training to be conducted)
	Number: 1 - 10 sites
	
	Training consisting of:
	
	(i) Technical
	(ii) Onsite
	
	Timing:
	(i) Users will review new hardware and new software changes prior to installation or prior to first patient treatments
	(ii) Technical support to be provided by Accuray during the initial patient treatments.
	
	Funding: Customer training to be funded by Accuray.
		Technical Training:
		• Train 2-3 people/site
		• Train 2-3 sites together up to 6 people/training
		• 1.5 days at Accuray's Corporate Training Center
		  • Faster, more accurate skull tracking algorithm
		  • Submillimeter accuracy tracking
		  • Importing DICOM RT files
		  • Medical Imaging Import Tool (MIRIT)
		  • Accufusion
		  • Software and hardware changes associated with Express
		  • Enhanced QA program
		  • Ball cube
		  • Automated QA treatment planning
		  • BB test
		  • KUKA robot
		  • Use of the teach pendant
		  • Manipulation of the robot
		  • Troubleshooting the robot
		  • Changes to recoverable and unrecoverable error handing
		  • Changes to Treatment Planning System (TPS)
		  • Changes to proximity detection program (PDP)
		• Day at Stanford University Hospital observing patient treatments
		  • Clinical observation of patient treatments
		  • Discussions with peers
		
		Clinical Training:
		• **None.**
		
		Onsite Training:
		• 1-2 days conducted at the customer site
		• Provide technical support for new software and hardware changes with initial patients
		• Accuray Training personnel to support Chiyoda Training Specialist to attend, observe and learn
			Technical Training
			• Chiyoda to send 1-2 people to provide support to new customers
			
			Clinical Training:
			• **None.**
			
			Onsite Training:
			• Chiyoda Training Specialist to attend, observe and learn.

Phase	Details	Accuray Training Obligations	Distributor Training Obligations

Phase 2:
Transitional Customers
(Meditec customers not yet installed)
	Number: Circa 11-16 sites
	
	Customer Training consisting of:
	(i) Technical
	(ii) Clinical
	(iii) Onsite
	
	Timing: Training to be conducted prior to installation of the CyberKnife.
	
	Funding: The Technical, Clinical and Onsite Training funded by Accuray.
		Technical Training
		• Train 2-3 people/sites
		• Train 1 team at a time
		• 3 days at Accuray's Corporate Training Center
		  • Patient setup and immobilization
		  • CT protocol guidelines
		  • Importing DICOM RT files and Medical Imaging Import Tool (MIRIT)
		  • Accufusion
		  • Basic and Advanced use of the Treatment Planning System (TPS)
		  • Mock patient treatments
		  • Faster, more accurate skull tracking algorithm
		  • Troubleshooting the system
		  • Handling recoverable and unrecoverable errors
		  • Proximity Detection Program (PDP)
		  • Manipulation of the robot
		  • Use of the teach pendant
		  • QA program
		  • Automated QA treatment planning
		  • BB test
		  • Film Analysis
		  • Beam Commissioning
		• 1 days at Stanford University Hospital observing patient treatments
		  • Clinical observation of patient treatments
		  • Discussions with peers
		
		Clinical Training:
		• 1 day visit at a Japanese Training Center
		  • Clinical observation of patient treatments
		  • Discussions with peers
			Technical Training
			• Chiyoda to send 1-2 people to technical training to provide support to new customers
			• Chiyoda Training Specialist to observe and learn about CyberKnife

Phase	Details	Accuray Training Obligations	Distributor Training Obligations
		• Accuray Training personnel and Chiyoda Training Specialist to support **Onsite Training:** • 3-5 days conducted at the Customer site • Provide technical support during initial patient treatments • Accuray Training personnel to support Chiyoda Training Specialist to attend, observe and learn	
Phase 3: **New Customers** (new Chiyoda customers)	**Number:** 17-50 sites **Customer Training consisting of:** (i) Technical (ii) Clinical (iii) Onsite **Timing:** Training to be conducted prior to installation of the CyberKnife following the 3 Sections of Customer Training **Funding:** Clinical and On-site training funded by Chiyoda Technology **Proposed Training Site Options:** **(i) Option 1:** Train customers in the US at Accuray Corporate Training Center for a $[*] for technical training only; $[*] for technical training plus 1 day clinical observation at Stanford with Stanford CyberKnife Team • Chiyoda Technology and Accuray Training Specialists to conduct technical training **(ii) Option 2:** Accuray along with Chiyoda Technology to establish and operate Training Center in Japan modeled after the Accuray Training Center. Technical training to be funded by Chiyoda Technology	**Technical Training:** • Train 2-3 people/site • 3 days at Accuray's Corporate Training Center • Patient setup and immobilization • CT protocol guidelines • Importing DICOM RT files and Medical Imaging Import Tool (MIRIT) • Accufusion • Basic and Advanced use of the Treatment Planning System (TPS) • Mock patient treatments • Troubleshooting the system • Handling recoverable and unrecoverable errors • Proximity Detection Program (PDP) • Manipulation of the robot • Use of the teach pendant • QA program • Automated QA treatment planning • BB test • Film Analysis • Beam Commissioning	**Technical Training:** • Chiyoda to send 1-2 people to participate in the technical training **Clinical Training:** • Chiyoda Training Specialist to support independently • Accuray Japanese Training Specialist to oversee **Onsite Training:** • Chiyoda Training Specialist to support independently Accuray Japanese Training Specialist to oversee

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Phase	Details	Accuray Training Obligations	Distributor Training Obligations

		Clinical Training:
		• 1 day visit at a Japanese Training Center
		  • Clinical observation of patient treatments
		  • Discussions with peers
		• Chiyoda Training Specialist to support independently
		  • Accuray Japanese Training Specialist to oversee
		
		Onsite Training:
		• 3-5 days conducted at the customer site
		• Provide technical support during initial patient treatments
		• Chiyoda Training Specialist to support independently
		  • Accuray Japanese Training Specialist to oversee	

Exhibit D

Exhibit Deleted

Exhibit E

EXISTING MEDITEC CUSTOMERS

Site Name	Location
Current	
1 Konan St. Hill H.	Ube, Yamaguchi
2 Osaka Univ. H.	Suita, Osaka
3 Okayama Kyokuto H.	Okayama, Okayama
4 Kumamoto Radiosurgery Clinic	Kumamoto, Kumamoto
5 Fujimoto Hayasuzu H.	Miyakonojo, Miyazaki
6 Kyushu Univ. H.	Fukuoka, Fukuoka
7 Imabari Saiseikai H.	Imabari, Ehime
8 Kyoto Soseikai H.	Kyoto, Kyoto
9 Tobata H	Kitakyushu, Fukuoka
Future	
10 [*]	[*]
11 Tsushima City H.	Tsushima, Aichi
12 [*]	[*]
13 Oka H.	Oita, Oita
14 Shinryokukai H.	Yokohama, Kanagawa
15 Kanto Neurosurgical Hospital Asanokawa	Kumagaya, Saitama (tent. Install date 3/03) cancelled

List based on 9/2/03 Mdt/ATC installation schedule

These hospital names may change by mutual agreement within thirty (30) days of the signature date of this Agreement.

[*] Certain information on this page has been redacted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Exhibit F

DISPUTE RESOLUTION

1. **Negotiation**. The parties shall attempt to resolve any dispute arising out of relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy, as set forth in **Section 6** of the Agreement.

2. **Mediation**. If the parties do not resolve the dispute within forty-five (45) days of undertaking negotiation thereof, either Party may refer the Dispute for mediation by the applicable mediation body (as provided below) or its successor (the "***Mediation Organization***") by providing the Mediation Organization and the other Party a written request for mediation, setting forth the details of the dispute and the relief requested. Each Party must then participate in the mediation in good faith and share equally in its costs. If a request for mediation is made, then the mediation shall take place in Santa Clara County, California. Mediation shall be conducted by JAMS or its successor, in accordance with the JAMS mediation rules and procedures then in effect Any mediation taking place between the parties will be conducted by: (i) a mediator agreed to by the parties selected from the applicable Mediation Organization's panel of neutrals; or (ii) if the parties do not agree on a mediator, a mediator nominated by the applicable Mediation Organization. Any mediation taking place between the parties shall be conducted in the English language. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any Mediation Organization employees, are confidential, privileged and inadmissible for any purpose, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

3. **Arbitration**. If the dispute has not been resolved by non-binding means as provided herein within ninety (90) days of the initiation of such procedure, either party may initiate arbitration with respect to such matters at any time following the period provided for mediation, or determination by the mediator that the parties will not be able to resolve the issue through mediation, by filing a written request for arbitration to JAMS, as provided below, in accordance with JAMS arbitration procedures. If a request for arbitration is made, then the arbitration shall take place in Santa Clara County, California. Any arbitration taking place shall be conducted by JAMS or its successor, in accordance with the JAMS arbitration rules and procedures then in effect. Any arbitration taking place between the parties shall be conducted in the English language.

4. **Other Remedies**. Notwithstanding the foregoing, each Party shall have right before or during negotiation, mediation or arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the negotiations, mediation or arbitration.

QuickLinks

Exhibit 10.27

TRAINING CENTER AGREEMENT

This Training Center Agreement ("Agreement") is made and entered into as of , 200_ (the "Effective Date") by and between Accuray Inc., a California corporation having its principal place of business at 1310 Chesapeake Terrace, Sunnyvale, California 94089 ("Accuray"), and , a , with its principal place of business at ("Training Center" and, together with Accuray, the "Parties"). Accuray desires to have Training Center provide training to certain of Accuray's customers regarding Accuray's CyberKnife® System and Training Center is willing to perform such training on the terms set forth more fully below. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. Training Services.

1.1. *Nature of Training Programs*. During the term of this Agreement, Training Center, along with personnel from Accuray's Training Department, will conduct training programs ("Programs") for certain of Accuray's customers ("Customers") at Training Center. The standard training format that Accuray provides to its Customers consists of (1) "Technical Training;" (2) a "Clinical Site Visit;" and (3) "On-site Training." The Programs conducted at Training Center pursuant to this Agreement shall primarily be training programs that constitute the "Clinical Site Visit." Occasionally, at the request of Accuray and if the Parties mutually agree to such a Program, the Training Center may also conduct additional training programs such as Specialty Training Programs. Customers who attend Programs at Training Center will complete Technical Training prior to attending any such Programs.

1.2. *Duration of Training Programs*. Each Program will last for two (2) days. Each Program typically shall include training for up to six (6) individuals, however, Accuray reserves the right to include up to twelve (12) individuals in a Program. In the event that Accuray includes more than twelve (12) individuals in a Program, then Accuray agrees that it shall pay Training Center an additional $200.00 for each individual beyond twelve (12) that Accuray includes in such Program, with such additional payment to be added to the Facility Fee for such Program.

1.3. *Scheduling of Training Programs*. When Accuray wishes to have Training Center conduct a Program, Accuray will contact Training Center in advance of the desired dates for such Program. Accuray and Training Center will then mutually agree upon the dates and times for the applicable Program.

1.4. *Modifications to Scheduled Programs by Training Center*. Once Training Center has agreed to conduct a Program on a certain date and time, Training Center shall conduct the Program as scheduled and any changes to the date and time of such Program by Training Center must be approved by Accuray in writing in advance of such Program. In any event, Training Center shall use its best efforts to provide Accuray with a minimum of four (4) weeks notice of any change with respect to the date or time of a scheduled Program. Failure of Training Center to provide Accuray with such advance notice shall be grounds for Accuray to terminate this Agreement, at Accuray's sole option. Additionally, Training Center acknowledges and agrees that once Accuray and Training Center have agreed upon a date and time for a Program, Accuray will incur expenses associated with the Program, for example relating to the coordination and scheduling of such Program by Accuray's Training Department for its Customers, travel to the Training Center for personnel from Accuray's Training Department, etc. As a result, should Training Center provide Accuray with less than four (4) weeks notice

of a change to a scheduled Program or not be prepared to proceed with a scheduled Program, then Customer shall promptly reimburse Accuray for any reasonable expenses incurred by Accuray.

1.5. *Modifications to Scheduled Programs by Accuray*. Accuray shall provide a minimum of two (2) weeks notice to Training Center of a change in the date or cancellation of any scheduled Program. Should Accuray fail to provide Training Center with at least two (2) weeks prior notice of any change in the date or cancellation of any scheduled Program then Accuray will pay Training Center a flat fee of up to $2,000.00 in order to compensate Training Center for any inconvenience and/or expenses incurred as a result of such change or cancellation.

1.6. *Format of Training Programs*. The purpose of each Program is to allow Customers' personnel experience clinical interaction with their respective peers in order to gain an understanding of and benefit from the clinical experience of Training Center personnel, including the application of Accuray products to different types of cases. Each Program will include:

(a) discussions by Training Center personnel of treatment protocols for intracranial, spine and other extracranial applications;

(b) observation of actual patient treatments using the CyberKnife system;

(c) an explanation of quality assurance practices and use of the CyberKnife delivery and planning system;

(d) review of actual patient cases, plans and outcomes; and

(e) didactic presentations on topics related to the clinical experiences and CyberKnife System program at Training Center.

Training Center will make reasonable attempts to match the backgrounds and/or specialties of its personnel conducting the Programs with the backgrounds and/or specialties of the Customers attending such Program.

1.7. *Content of Training Programs*. Prior to Training Center conducting any Programs, Accuray and Training Center shall collaborate on the content of the Programs to be presented at Training Center and the selection of presenters; provided, however, that Training Center shall submit all training materials and content to be presented at a Program as well as a list of the presenters to Accuray for its review and approval at least thirty (30) days prior to such Program unless Accuray specifically waives this requirement in writing prior to such Program. Likewise, Training Center shall also notify Accuray of any changes to the training materials, content or the list of presenters for a Program and obtain Accuray's prior written approval for such changes if Training Center seeks to modify such items once Accuray has initially reviewed and approved them. Training Center acknowledges and agrees that it will not conduct any training or give any instructions at any Program that are inconsistent with the recommended procedures and instructions contained in Accuray' s User's Manuals. For example, Training Center shall not train Customers on or recommend prone treatments or treatments using a different number of fiducials than Accuray recommends in its User's Manuals. Training Center shall also require that its presenters disclose when an Accuray product under discussion is not approved in any country in which a Customer's site is located.

1.8. *Frequency of Programs*. Accuray makes no representations as to how frequently Programs will be conducted at Training Center, however Accuray and Training Center shall mutually agree on the dates and times for all such training activities.

1.9. *Training Center Representatives.* The following Training Center Personnel shall act as "Training Center Representatives" and thereby conduct and/or participate in all Programs at Training Center along with personnel from Accuray's Training Department:

- **[List names of Training Center Representatives]**
-
-
-
-
-

The Training Center shall be responsible for ensuring that the Training Center Representatives are present at and conduct and/or participate in, as applicable, each scheduled Program. In the event that a Training Center Representative is unable to attend a scheduled Program, then the Training Center shall identify to Accuray a suitable individual with the same specialty and similar credentials and request Accuray's approval for such substitution. Any changes to the Training Center Representatives conducting and/or participating in a Program must receive prior written approval from Accuray, such approval not to be unreasonably withheld.

2. Training Center Prerequisites.

2.1. Accuray requires that all of its Training Centers meet and maintain the following clinical criteria in order to qualify as a Training Center:

(a) Training Center has been actively treating patients for at least one (1) year;

(b) Training Center has completed more than seventy-five (75) patient treatments;

(c) Training Center is treating more than twelve (12) patients per month;

(d) Training Center maintains a varied patient base;

(e) Training Center is treating intracranial and spine patients;

(f) Training Center also treats at least three (3) extracranial patients, including some soft tissue, per month; and

(g) Training Center employs a dedicated multi-disciplinary team of physicians.

Training Center represents that: (i) as of the Effective Date of this Agreement it complies with the above Training Center Requirements; (ii) it will continue to do so during the term of this Agreement; and (iii) Training Center shall notify Accuray immediately in the event that it fails to meet any of the above Training Center Requirements during the term of this Agreement.

3. Compensation.

3.1 *Compensation to Training Center.* For each Program conducted at Training Center, Accuray will pay Training Center a facility fee of $2,500 USD (the "Facility Fee"). The Facility Fee is intended to compensate Training Center for the support of its Director of Cancer Services, radiation therapists and administrative support. All payments to the Training Center will be made payable to the hospital or a designated department within thirty (30) days of the invoice date. The Parties acknowledge that payment of the Facility Fee to Training Center is consistent with the fair market value of such services and is not conditioned in any way on

(i) the volume or value of any business (i) between Accuray and any other party or (ii) the volume or value of any business resulting, directly or indirectly, from any of Training Center's other activities.

3.2. *Honorariums*. In addition to the Facility Fee, which shall be paid to the Training Center, Accuray will provide compensation to Training Center's employed and non-employed clinical staff for each Program that such individuals conduct and/or participate in, as follows:

- Physicians: $375 USD per hour with a maximum of $3,000 USD per Program
- Physicists: $300 USD per hour with a maximum of $2,400 USD per Program

Compensation for the individuals listed above shall be conditioned on such individuals actually conducting or participating, as applicable, in each Program and Accuray's receipt and approval of accurate and detailed records of the time spent, including an hourly accounting of the time spent by each individual seeking compensation in connection with this Agreement, and services performed by such individuals. The Parties acknowledge that payment for the services provided by the individuals listed above is consistent with the fair market value of such services and is not conditioned in any way on (i) the volume or value of any business (i) between Accuray and any other party or (ii) the volume or value of any business resulting, directly or indirectly, from any of such individual's other activities. Accuray will pay honorariums for the Training Center's employed staff to the Training Center. Accuray will pay honorariums for the Training Center's non-employed clinical staff directly to such individuals. Subject to the foregoing, Accuray will pay all invoices submitted in accordance with this Section within thirty (30) days of Accuray's receipt and approval of such invoices.

3.3. *Additional Expenses*. Training Center shall not be responsible for the hotel, airfare, meals, other travel related expenses or training material related expenses incurred by Accuray's Customers in connection with the Programs. Accuray shall provide the necessary training materials for its Customers. In addition, Accuray will reimburse Training Center for all reasonable expenses incurred by Training Center for catering the Programs, up to a maximum of $2,000 USD. Accuray will not reimburse Training Center for any expenses incurred by Training Center for catering the Programs in excess of $2,000 USD unless Training Center shall receive prior written approval for any such expenses from Accuray's Senior Manager of Worldwide Training or equivalent Accuray representative. Any reimbursement by Accuray for catering expenses incurred by Training Center shall be conditioned on Accuray's receipt and approval of detailed receipts evidencing Training Center's payment of such expenses. Subject to the foregoing, Accuray will reimburse Training Center for such catering expenses within thirty (30) days of Accuray's receipt and approval of the invoice for such catering expenses. All other expenses incurred by Training Center in connection with this Agreement shall be the sole responsibility of Training Center.

4. Independent Contractor Status.

4.1. It is the Parties' intent that Training Center at all times, and with respect to all Programs and services covered by this Agreement function as and remain an independent contractor, and nothing in this Agreement is intended to nor shall it be construed to create a partnership, joint venture, or employment relationship between Accuray and Training Center. Likewise, Training Center and its personnel and employees are not agents, employees or officers of Accuray, and neither Party shall represent to third parties that Training Center or its personnel or employees are agents, employees or officers of Accuray. Training Center and its personnel and employees shall have no authority to bind Accuray by contract or otherwise.

4.2. Training Center and its personnel and employees, as applicable, shall be responsible for the payment of all taxes on amounts received from Accuray in connection with the Programs. If the Training Center is located in the United States, then Accuray will regularly report amounts paid to Training Center's personnel or employees by filing Form 1099-MISC with the Internal Revenue service, as required by law. If the Training Center is located outside of the United States, then Training Center and/or the Customers, as applicable, shall be responsible for any applicable taxes or the like in that particular territory or jurisdiction. No part of any honorariums paid to Training Center's personnel or employees will be subject to withholding by Accuray for payment of any social security, unemployment or disability insurance, federal, state or other employee payroll taxes or similar items. Training Center agrees to indemnify and hold Accuray harmless from and against all claims, damages, losses, costs and expenses, including reasonable fees and expenses of attorneys and other professionals, relating to any obligation imposed by law on Accuray to pay any social security, unemployment or disability insurance, federal, state or other employee payroll taxes or similar items in connection with compensation received by Training Center's personnel or employees pursuant to this Agreement.

4.3. Training Center shall furnish Accuray with proof of Worker's Compensation Insurance (or like insurance) coverage for all of Training Center's personnel or employees who provide services pursuant to this Agreement.

4.4. Training Center will maintain adequate insurance to protect Training Center from the following: (i) claims under workers' compensation and state disability acts; (ii) claims for damages because of bodily injury, sickness, disease or death that arise out of any negligent act or omission of Training Center; and (iii) claims for damages because of injury to or destruction of tangible or intangible property, including loss of use resulting therefrom, that arise out of any negligent act or omission of Training Center.

5. Confidentiality.

5.1. *Confidential Information*. "Confidential Information" means and will include (i) Accuray proprietary information, materials or knowledge, technical data, trade secrets or know-how, including, but not limited to, research, product plans, product specifications, services, customers, customer lists, pipeline documents, marketing plans and strategies, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, circuit board designs, logic designs for filters and/or circuit boards, Accuray financials or other business information disclosed by Accuray either directly or indirectly in writing, orally, or by drawings or inspection of parts or equipment; (ii) the Inventions (as defined below); and (iii) the existence and terms and conditions of this Agreement. Confidential Information also includes any other information designated by Accuray as such upon its disclosure to Training Center.

5.2. *Disclosure*. Training Center and its personnel and employees will not, during or subsequent to the term of this Agreement, use Accuray's Confidential Information for any purpose whatsoever other than conducting the Programs on behalf of Accuray. Training Center and its personnel and employees will not disclose Accuray's Confidential Information to any third party, and understands that said Confidential Information shall remain the sole property of Accuray. Training Center further agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information including, but not limited to, having each employee of Training Center or individual providing services to Training Center in connection with the Agreement with access to any Confidential Information, enter into and be bound by an agreement containing provisions in Accuray's favor substantially similar to those

contained in this Section of the Agreement. Confidential Information does not include information which, upon disclosure to Training Center is part of the public domain; can be established by written evidence to have been in the possession of Training Center at the time of disclosure; is received by Training Center from a third party without restriction and without breach of this Agreement; or has become publicly known and made generally available through no wrongful act of Training Center. If Training Center is required to disclose Confidential Information by lawfully issued subpoena or by an authorized order of a government agency, Training Center will immediately so inform Accuray, and will use best efforts to minimize the disclosure of such Confidential Information and will consult with and assist Accuray in seeking a protective order prior to such disclosure.

5.3. *Confidentiality Indemnity*. Training Center agrees that Training Center will not, during the term of this Agreement, improperly use or disclose to Accuray or any of its employees any proprietary information or trade secrets of any other person or entity with which Training Center has an agreement, or to which Training Center has a duty, to keep in confidence information acquired by Training Center. Training Center will indemnify Accuray and hold it harmless from and against all claims, liabilities, damages and expenses, including reasonable attorneys' fees and costs of suit, arising out of or in connection with any violation or claimed violation of a third party's rights resulting in whole or in part from the Programs conducted by Training Center under this Agreement (collectively, a "Claim").

5.4. *Return of Confidential Information*. Upon the termination of this Agreement, or upon Accuray's earlier request, Training Center will deliver to Accuray all of Accuray's property and all Confidential Information in tangible form that Training Center or its personnel or employees may have in the their possession or control.

6. HIPAA.

6.1. *Compliance with HIPAA*. In performing the Services hereunder, Accuray may receive from Training Center, or create or receive on behalf of Training Center, patient healthcare, billing, or other confidential patient information, "***Patient Information***". Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to assist in conducting the Programs under this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 "***HIPAA***".

6.2. *De-Identified Information for Training Centers in United States*. If the Training Center is located in the United States, with the exception of the Customers' observation of actual patients, the Training Center shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514, wherever possible. Any information provided to or shared with Accuray in connection with this Agreement shall have all identifying patient information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c) wherever possible.

6.3. *De-Identified Information for Training Centers Outside United States*. If the Training Center is located outside the United States, then, with the exception of the Customers' observation of actual patients, the Training Center shall only provide Accuray with information in a format that complies with any applicable laws or regulations governing or relating to the privacy and protection of patient information, wherever possible.

6.4. *Patient Consent*. Training Center shall ensure that all necessary authorizations that may be required under any applicable state, federal or local laws, regulations or and ordinances are obtained from patients prior to allowing any Accuray employees or Customers to observe the treatments of such patients.

7. Indemnification.

7.1. Each Party agrees to indemnify, hold harmless and defend the other from and against any and all claims, damages, losses and expenses, including court costs and reasonable attorneys' fees, arising out of or resulting from the actions or inactions of the indemnifying Party. Without limiting the generality of the foregoing, each Party shall be responsible for the information which it conveys to Customers at Programs being conducted pursuant to this Agreement. Accuray shall be responsible for the content of the training materials it provides in connection with the Programs as well as for information communicated orally by its Training Department personnel as part of the Programs. Training Center shall be responsible for any information which it or its personnel, employees or agents communicate to Customers in connection with the Programs to the extent that that such information is not expressly contained in writing in the training materials provided by Accuray or in the spoken communications of personnel from Accuray's Training Department during the Programs.

8. Status of Training Center.

8.1. Nothing herein shall be in any way construed to endorse Training Center as an authorized training site to conduct manufacturer-certified training for any products manufactured by Accuray and Training Center shall not represent itself as such.

9. Term.

9.1. *Term.* This Agreement shall be effective as of the Effective Date and will terminate one (1) year following the Effective Date unless otherwise extended in writing by mutual agreement of the Parties or terminated in accordance with Section 10 below.

10. Termination.

10.1. *Termination by Either Party*. Either Party may terminate this Agreement at any time by providing sixty (60) days written notice.

10.2. *Termination in Connection with Governmental Action.* The Parties shall attempt to amend this Agreement upon receipt of any Governmental Action in order to comply with such Governmental Action. If the Parties, acting in good faith, are unable to make the amendments necessary to comply with such Governmental Action, or, alternatively, if either Party determines in good faith that compliance with the Governmental Action is impossible or infeasible, this Agreement shall terminate ten (10) days after one Party notifies the other of such fact. For purposes of this Section 10(b)(ii), the term "Governmental Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to Accuray, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would: (A) constitute a violation of any federal, state or local law; or (B) subject either Party, or any of their respective employees or agents, to civil or criminal liability or prosecution on the basis of their

participation in executing this Agreement or performing their respective obligations under this Agreement.

10.3. *Similar Agreement.* If this Agreement is terminated for any reason within one-year of the Effective Date, the Parties shall not enter into the same or substantially the same arrangement contemplated by this Agreement during the period which is one-year following the Effective Date.

11. Effect of Termination.

11.1. Upon the expiration or any termination of this Agreement, Accuray will pay Training Center any amounts that are due and payable for Programs performed by Training Center prior to the effective date of expiration or termination within thirty (30) days of such date.

11.2. Upon the expiration or termination of this Agreement for any reason, Training Center will promptly notify Accuray of all Confidential Information in Training Center's possession or control and will promptly deliver all such Confidential Information to Accuray, at Training Center's expense and in accordance with Accuray's instructions.

12. Damages.

12.1. ACCURAY'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE AMOUNT ACCURAY HAS PAID TRAINING CENTER HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM.

13. Limitation of Liability.

13.1. IN NO EVENT WILL ACCURAY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF ACCURAY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

14. Assignment.

14.1. Training Center may not assign or transfer any of Training Center's rights or interests or delegate any of Training Center's obligations under this Agreement, in whole or in part, without Accuray's express prior written consent. Any attempted assignment, transfer or delegation, without such consent, will be void, except that Accuray may assign this Agreement, without Training Center's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties' permitted successors and assigns.

15. Arbitration and Equitable Relief.

15.1. *Arbitration.* Except as provided in Section 15.2 below, Accuray and Training Center agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement shall be settled by arbitration to be held in Santa Clara County, California before a single, neutral arbitrator associated with the Judicial Arbitration and Mediation Service ("JAMS"). The arbitrator shall be selected by the Parties or, if the Parties are unable to agree, by JAMS, in accordance with its selection practices. The

arbitrator may grant injunctions or other relief in such dispute or controversy. Any arbitration taking place shall be conducted by JAMS or its successor, in accordance with the JAMS arbitration rules and procedures then in effect. Any arbitration taking place between the parties shall be conducted in the English language. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. Unless otherwise required to preserve the enforceability of this arbitration clause, Accuray and Training Center shall each pay one-half of the costs and expenses of such arbitration.

15.2. *Equitable Relief.* Training Center agrees that it would be impossible or inadequate to measure and calculate Accuray's damages from any breach of the covenants set forth in Section 5 herein. Accordingly, Training Center agrees that if Training Center breaches Sections 5, Accuray will have available, in addition to any other right or remedy available, the right to obtain from any court of competent jurisdiction an injunction restraining such breach or threatened breach and specific performance of any such provision. Training Center further agrees that no bond or other security shall be required in obtaining such equitable relief and Training Center hereby consents to the issuances of such injunction and to the ordering of such specific performance.

16. Miscellaneous.

16.1. *Amendments and Waivers.* Any term of this Agreement may be amended or waived only with the written consent of the Parties.

16.2. *Entire Agreement.* This Agreement, including the Exhibits hereto, constitutes the entire agreement of the Parties and supersedes and replaces all oral negotiations and prior writings with respect to the subject matter hereof.

16.3. *Termination of Prior Agreement.* The Parties hereby acknowledge and agree that any prior agreement between the Parties related to the subject matter hereof shall automatically terminate upon the Parties' signature of this Agreement and that the terms and conditions set forth in this Agreement shall govern Training Center's provision of Programs hereunder.

16.4. *Governing Law.* The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to its principles of conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the Parties hereby irrevocably consent to the personal jurisdiction and venue therein.

16.5. *Legal Fees.* If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding, pursuant to Section 15.2, to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

16.6. *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such unenforceable provision shall be deemed modified so as to be enforceable (or if not subject to modification then eliminated herefrom) for the purpose of those procedures to the extent necessary to permit the remaining provisions to be enforced.

16.7. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

16.8. *Compliance with Laws.* The Parties agree to abide by Accuray's compliance policies and all federal, state or local laws, regulations, ordinances or other legal requirements in connection

with the performance of the services hereunder. Accuray will not be held responsible for any activities of Training Center that may be considered to be illegal. For example, Accuray does not support the practice of bribes or under-the-table payments. In the event that Accuray deems that the good-will of its products has been significantly or may potentially be affected by any such illegal activity, then Accuray reserves the right to terminate this Agreement under Section 10.1, with no further liability to Training Center. Accuray assumes no liability for any such practices and Training Center hereby indemnifies and holds Accuray, its officers and assigns, harmless from any and all such activities of Training Center. In addition, at all times during this Agreement, Training Center shall have in effect all licenses, permits and authorizations for all local, state, federal and foreign governmental agencies to the extent the same are necessary to the performance of the services and Programs hereunder and will verify all such licenses, permits and authorizations are in place before performing any services or conducting any Programs under this Agreement. Training Center shall not perform any services or conduct any Programs under this Agreement for which it does not hold all necessary licenses, permits and authorizations and will hold Accuray harmless in all respects for any claims or actions resulting from Training Center's violation of this provision.

16.9. *No Election of Remedies.* Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or available at law or in equity.

16.10. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with the carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with the carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section:

To Accuray:	**To Training Center:**
Accuray Incorporated	_____
Attention: SVP, Chief Marketing Officer	_____
1310 Chesapeake Terrace	_____
Sunnyvale, CA 94089 with cc to: General Counsel	_____

16.11. *Waiver.* The waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same or other provisions hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the day and year first written above. The Parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

TRAINING CENTER

Signature: _____

Name: _____

Title: _____

Address: _____

_____

Telephone: _____

Date: _____

ACCURAY, INC.

Signature: _____

Name: Eric Lindquist

Title: SVP, Chief Marketing Officer

Address: 1310 Chesapeake Terrace

Sunnyvale, CA 94089

Telephone: (408) 716-4600

Date: _____

Signature: _____

Name: Darren J. Milliken

Title: General Counsel

Date: _____

SIGNATURE PAGE TO ACCURAY TRAINING CENTER AGREEMENT

QuickLinks

TRAINING CENTER AGREEMENT

Exhibit 10.28

ACCURAY INCORPORATED
INTERNATIONAL DISTRIBUTOR AGREEMENT

This International Distributor Agreement ("Agreement") is entered into by and between ACCURAY INCORPORATED, a California corporation with its executive offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, USA ("Accuray"), and a corporation organized under the laws of , with its executive offices located at ("Distributor"), as of ("Effective Date").

Accuray manufactures and sells full-body radiosurgery systems using image-guided robotics, including the CyberKnife, which is FDA cleared in the United States 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 order to achieve its business objectives, Accuray relies on qualified distributors to market and distribute its products and services in different territories.

Accuray wishes to appoint Distributor as its exclusive distributor in the Territory, as defined below, subject to the terms and conditions of this Agreement and Distributor wishes to accept such appointment.

1. Definitions

1.1. **Accuray's Terms of Sale** means the current standard international transaction terms and conditions of sale prepared by Accuray from time to time and provided to Distributor.

1.2. **Customer** means any person or business entity lawfully doing business in the Territory with whom Distributor enters into an agreement for Products or Services, including an "investment project" whereby Distributor enters into a partnership with Customer. Customer does not include sites or hospitals located on United States armed forces bases in the Territory.

1.3. **Product(s)** means the CyberKnife System and/or related products manufactured by or for Accuray for use in the radiosurgery market and listed in Exhibit A attached to this Agreement, which have been approved for sale in the Territory.

1.4. **Project** means any activity or situation that includes a potential Customer or prospect that might be interested in acquiring Accuray's Products or Services.

1.5. **Proposal** means a document that offers to provide Products or Services to a prospective Customer.

1.6. **Purchase Order** means a document provided by Distributor to Accuray that sets forth in adequate detail, including specifications and delivery schedule, the Products or Services ordered.

1.7. **Service(s)** means the performance of radiosurgery-related service(s) by either Accuray or Distributor, which may include technical support, training or installation of Products, as listed in Exhibit A.

1.8. **Service Agreements** means the Accuray Diamond Elite Service Agreement, Ruby Elite Service Agreement, Emerald Elite Service Agreement and Extended Parts Warranty,

Additional Upgrade Agreement or such other service programs and agreements as may be released or modified by Accuray from time to time.

1.9. **Specification(s)** means the current written description of a Product or Service prepared by Accuray and provided to Distributor.

1.10. **System(s)** means the Accuray CyberKnife® Robotic Radiosurgery System as set forth in Exhibit A attached hereto.

1.11. **Territory** means .

2. Duties of Accuray

2.1. **Status.** Accuray is responsible for ensuring that the Products supplied are of good quality as further described below.

2.2. **Exclusive Distributor.** Accuray hereby appoints Distributor as the exclusive distributor of Products and Services to Customer in the Territory, subject to the terms and conditions of this Agreement. So long as Distributor achieves the volume of business set forth below and otherwise meets its obligations under this Agreement, Distributor shall be the exclusive distributor of Products and Services to Customer in the Territory.

2.3. **Products and Services.** Accuray will use commercially reasonable efforts to provide to Distributor in a timely manner those Products and Services required to fill Purchase Orders received from Distributor in accordance with the terms of this Agreement.

2.4. **Product and Service Pricing.** Accuray will provide Product and Service pricing to Distributor from time to time during the Term of this Agreement. Products and Services shall be priced by Accuray to Distributor in accordance with Accuray's price list in effect from time to time, but, in any case, no change can be made without six (6) months' prior written notice to Distributor. The current prices, as of the Effective Date, of Accuray's Products and Services are listed on Exhibit A. All prices will be stated in US Dollars, unless another currency is agreed upon in writing by Accuray.

2.5. **Product Specifications and Promotional Literature.** Accuray will provide product specifications and promotional literature to Distributor from time to time during the Term of this Agreement. Distributor may use product specifications and promotional literature in Distributor's dealings with Customers. Accuray may introduce changes and upgrades to the Products. Accuray will be responsible for ensuring that any changes or upgrades to the Products comply with the latest regulatory approvals, and will use commercially reasonable efforts to give Distributor as much advance notice of upgrades as is feasible.

2.6. **Regulatory Clearance.** Distributor is responsible for obtaining the regulatory clearance in the Territory for Products in Accuray's name, as detailed in Section 3.4, however Accuray will provide Distributor with reasonable assistance in obtaining regulatory clearances.

2.7. **Warranty.** Accuray will provide a warranty that the Products will be free from defects and perform substantially in accordance with the written Specifications provided by Accuray as reflected in the regulatory clearance at the time of sale for a period of one year following installation of the Products at Customer's facility, but not to exceed eighteen (18) months following shipment of such Products to Distributor. Accuray makes no warranty that the operation of any software will be uninterrupted or error-free. Except as set forth in the preceding sentences, Accuray makes no warranties or representations to Distributor or to any other party regarding any Products or Services provided by Accuray. **To the fullest extent permitted by applicable law, Accuray disclaims all other warranties and representations, whether express or implied, including, but not limited to, any implied**

warranties of merchantability, fitness for a particular purpose, and any warranties arising out of course of dealing or usage of trade.

2.8. **Support.** Accuray will provide Distributor the following types of support:

2.8.1. **Hardware.** During the warranty period, Accuray will provide replacement of defective parts. This will be Accuray's sole and exclusive obligation. Accuray shall not be responsible for the installation and labor costs for such replacement parts.

2.8.2. **Software.** During the warranty period, Accuray will provide error corrections or "bug fixes." This will be Accuray's sole and exclusive obligation. Additionally, Accuray shall provide Distributor with any and all applicable error corrections and bug fixes generally provided by Accuray to Accuray customers with similar Product installations.

2.8.3. **Warranty Exclusions.** All warranty replacement of parts shall be limited to malfunctions which are due and traceable to defects in original material or workmanship of Products. The warranties set forth in this Section 2 shall be void and of no further effect in the event of abuse, accident, alteration, misuse or neglect of Products, including but not limited to user modification of the operating environment specified by Accuray and user modification of any software.

2.8.4. **Service Agreements.** The Service Agreements will be provided at the time of purchase or after the one-year warranty period, as appropriate. A summary of the service terms and sample Service Agreements attached hereto as Exhibit D. The Service Agreements are to be ordered on the terms as set forth in the agreements, unless otherwise agreed to in writing by an authorized representative of Accuray.

2.8.4.1. **Accuray Direct Sales.** Accuray reserves the right to sell the Service Agreements directly to customers within the Territory. Accuray's prices for such direct Service Agreements are set forth in Exhibit D, and Accuray will not offer any Service Agreements to customers in the Territory at lesser prices without six (6) months prior written notice in accordance with Section 2.4 (Product and Service Pricing) above.

2.8.5. **Additional Support.** Accuray will provide additional installation, warranty or service support at Distributor's request, to be ordered separately, and priced according to Accuray's then-current price lists.

2.9. **Training.** Accuray will provide training to Distributor and Customers in accordance with Exhibit C.

2.10. **Compliance with Laws.** Accuray will be responsible for complying with U.S. laws, and, as notified by Distributor, with Territory laws as they pertain to the Product and the regulatory clearance, and safety in accordance with Accuray's written Product specifications for intended use. Upon notification by Distributor of any impending changes to Territory laws or regulatory requirements that may necessitate modifications in the Products or Services, Accuray shall respond to such notifications in a timely manner and make necessary efforts to ensure continued compliance.

3. Duties of Distributor

3.1. **Status.** Distributor shall be and must at all times make it clear that it is an independent entity contracting with Accuray, and is not the employee, representative or agent of Accuray. Distributor does not have the ability or authority to enter into any legal agreements or obligations that would bind Accuray in any manner. Distributor represents

that it is involved in other businesses, not competitive with its activities under this Agreement but of sufficient volume and profitability that Distributor is in no way dependent upon this Agreement or its relationship with Accuray for its continuing viability or success. Distributor will inform Accuray of any business that it is pursuing and is potentially competitive (in the same treatment area, using vaults, using the same sales and marketing personnel) and will obtain prior written approval from Accuray prior to entering into such business.

3.2. **Training.** Distributor will support Accuray's training of new Customer personnel, and will send new Customer users for training at Accuray, according to Exhibit C.

3.3. **Market Knowledge, Promotion and Sales.** Distributor represents that it has a thorough knowledge of the Territory, the market for radiosurgery products and of all current and proposed Projects. Distributor will develop a thorough and complete understanding of the Products and Services. Distributor will use its knowledge and understanding to develop potential Projects.

3.3.1. Distributor will use best efforts to promote the sale of and to sell Products and Services to Customers in accordance with Accuray's marketing guidance and policies in effect from time to time and will make best efforts to learn of any potential Project. Distributor will make itself familiar with each such Project so as to learn all conditions of the Project which may impact the Products or Services to be offered. In addition, as Accuray releases new features and Products, Distributor will use best efforts to promote the sale of and to sell those features and Products to the installed base of Products and to new Customers in the Territory.

3.3.2. Distributor sales and marketing staff will actively participate in the following yearly activities: American Society of Therapeutic Radiology & Oncology (ASTRO); American Association of Neurological Surgeons (AANS); European Society of Therapeutic Radiology and Oncology (ESTRO) (if applicable); Accuray worldwide users' meeting; and Accuray worldwide sales meetings. Active participation includes attendance at and participation in such meetings.

3.3.3. Distributor will report to Accuray any proposed or pending Projects outside the Territory about which Distributor learns during the Term of this Agreement.

3.4. **Regulatory Clearance.** Distributor will be responsible for obtaining the regulatory clearance in the Territory (in Accuray's name if possible, in Distributor's name if not possible) for Products and for any changes or upgrades to the Products. Distributor will be responsible for (i) managing and paying for any paperwork associated with obtaining the regulatory clearance; (ii) the costs of seeking approval for expanded usage of the Products; (iii) timely application for all upgrades that Accuray determines are commercially appropriate; and (iv) maintaining the regulatory clearance. Accuray will provide Distributor with reasonable assistance in obtaining regulatory clearances. Accuray shall reimburse Distributor for any direct costs or charges billed by third parties, plus any other direct regulatory clearance-related expenses incurred in connection with such activities, as long as those costs have been pre-approved in writing by an authorized representative of Accuray. At Accuray's request, Distributor will provide Accuray with receipts and other documentation for all such expenses. Accuray shall not be responsible for Distributor's internal administrative personnel or resources for such activities.

3.5. **Import License.** Distributor will obtain and maintain the required import license.

3.6. **Distributor Personnel.**

3.6.1. **Full-Time, Dedicated Personnel.** Distributor will provide full-time, dedicated personnel that will include (to be determined) a general manager, a senior product manager and support staff, at least one (1) senior sales person with sufficient skill, training and experience to be effectively capable of selling a $4 million medical product, and one (1) clinical support or training specialist. Distributor will provide adequate technical support staff for the operation and maintenance of the Products and Services. Distributor will employ one (1) service engineer who is capable of performing installation and First Line Field Service (as defined in Section 3.20 (First Line Field Service) below). All of these personnel must be hired and attend training at Accuray within nine (9) months of the Effective Date of this Agreement. Accuray will provide the training and Distributor will pay for travel and accommodation expenses. These personnel will be full-time, one hundred percent (100%) dedicated to the business relating to Accuray's Products and Services and will have adequate backgrounds in surgical and/or radiation oncology products and services, experience and training to perform the following functions:

3.6.1.1. Sales, sales management, sales forecasting, and order management;

3.6.1.2. Marketing throughout the Territory;

3.6.1.3. Planning for the installation and installing Products;

3.6.1.4. Clinical trials, regulatory compliance, and reimbursement;

3.6.1.5. Product management;

3.6.1.6. Development of on-site training;

3.6.1.7. Provision of Services; and

3.6.1.8. First Line Field service.

3.7. **Proposals.** Distributor will submit a timely Proposal on every Project in the Territory during the Term of this Agreement. All Proposals shall be prepared and submitted to the Customer by Distributor. Proposals will offer only Products or Services described in then current written Specifications, and only in accordance with this Agreement. Unless Distributor has prior written consent from Accuray to the contrary, all Proposals submitted by Distributor are (and Distributor must inform the Customer that they are) subject to change in the event Accuray's Terms of Sale or Specifications change prior to the time Distributor accepts an order from the Customer (if it does).

3.8. **Orders.** Distributor will receive each order placed by a Customer to which Distributor has submitted a Proposal. Orders may be accepted only by Distributor. The resulting contract for the sale of Products and Services shall be between Distributor and the Customer. In the case of a Product order, Distributor must send a Purchase Order to Accuray at least six (6) months prior to the expected shipment date. All Products must be purchased from Accuray unless otherwise specified in this Agreement or agreed in writing by Accuray.

3.9. **Payment.** Payment for Products shall be made by Distributor to Accuray in US Dollars in the form of either (1) an irrevocable trade finance letter of credit or (2) wire transfer as further described in Sections 3.9.1 and 3.9.2, respectively below. Accuray shall bear the cost of any bank charges assessed by its bank for a letter of credit and any commission charge for a wire transfer. Distributor will pay a late charge of two percent (2%) on any balance that becomes overdue, plus interest at the rate of one percent (1%) per month or the highest interest rate allowed by law, whichever is greater, until paid in full.

3.9.1. **Letter of Credit.** An irrevocable trade finance letter of credit issued by Distributor's bank, confirmed by a bank designated by Accuray that is doing business in the State of California, United States of America, in all respects, including the confirming bank, acceptable to Accuray, and delivered to Accuray with the Purchase Order. The letter of credit will provide that Accuray can draw against the letter of credit according to the following schedule:

3.9.1.1. US $450,000 (non-cancelable, non-refundable) upon Accuray's acceptance of the Purchase Order, which must be at least four (4) to six (6) months prior to the proposed shipment date; and

3.9.1.2. Balance upon presentation of documents evidencing shipment of the Products to Distributor or Customer as designated in the Purchase Order.

3.9.2. **Wire Transfer.** A wire transfer made in advance of the date payment is due, made in U.S. dollars, to a bank selected by Accuray, in accordance with the same payment schedule as outlined above with respect to the Letter of Credit.

3.9.3. **Payments by Distributor's Customer Direct to Accuray.** If agreed to in writing by Accuray, Distributor's Customers may make payments directly to Accuray using the payment methods set forth in Sections 3.9.1 or 3.9.2 above. Should Distributor's Customer make such payments to Accuray and such payment include the Distributor's margin, then Accuray will pay Distributor's margin to Distributor according to the following schedule:

3.9.3.1. Ten percent (10%) of Distributor's margin upon Distributor's Customer signing a purchase agreement with Distributor and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above;

3.9.3.2. Sixty percent (60%) of Distributor's margin upon shipment and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above; and

3.9.3.3. Thirty percent (30%) of Distributor's margin upon installation with successful acceptance testing of the Equipment and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above.

3.10. **Volume of Business.** Accuray and Distributor have reviewed and discussed the Territory in detail and have agreed that Distributor will purchase and pay for the minimum volume of Systems as set forth in Exhibit B attached to this Agreement. If Distributor does not make the minimum purchases set forth in Exhibit B, or does not pay timely (within ninety (90) days of the due date) for those purchases, Accuray may, at its sole determination and in its sole and complete discretion, elect to make this distribution arrangement non-exclusive or terminate this Agreement.

3.11. **Forecast.** In order to support Accuray's production planning, at least every three (3) months during the Term of this Agreement, Distributor will provide Accuray an eighteen (18) month rolling forecast of: (i) targeted Customers, (ii) contracted Customers, and (iii) forecast of Product sales by product line. The forecast will include an update on the top ten (10) projects. Such forecasts shall be provided to Accuray by the first business day of

January, April, July and September each year, and shall be delivered to the Accuray General Manager for the Territory. Such forecasts are in addition to the reports to be provided in accordance with Section 3.22.1 (Reports) below.

3.12. **Customer Support.** Distributor will provide guidance to billing and reimbursement personnel of each Customer regarding regulatory and billing requirements and reimbursement for treatment provided with Products under radiosurgery reimbursement codes applicable within the Territory. Distributor will be responsible for ensuring that its personnel maintain their proficiency with respect to the Products and all upgrades, enhancements and new feature releases, and will send its personnel to Accuray for training as necessary.

3.13. **Customer Relations.** Distributor shall deliver Products and Services to Customers in the Territory, shall report promptly and in writing to Accuray any complaints or expressions of dissatisfaction by the Customer relating to the Products or Services. While Distributor shall have no authority to offer on behalf of Accuray anything in settlement of any such complaints or expressions, Distributor shall use all best efforts to satisfy the Customer that the Products and Services meet the applicable written Specifications, Proposal, and Order, if such is the case.

3.14. **Public Relations.** Distributor will implement a public relations program once a CyberKnife is operational in the Territory.

3.15. **Installation.** Distributor will be responsible for providing installation for any Product a Customer purchases. Distributor may engage Accuray (to be ordered separately, and priced according to Accuray's then-current price lists) or other organizations that have Accuray-trained personnel to provide supervision and assistance, or to perform the full installation, at Distributor's expense.

3.16. **Other Customer Support.** Distributor will have primary responsibility for room evaluation, architecture support and quality assurance issues.

3.17. **Warranty.** Distributor will be responsible for providing a one (1) year warranty (for parts and service) for each Product a Customer purchases. Distributor will not make any other warranties or representations in Accuray's name or on Accuray's behalf.

3.18. **Service Agreements.** Distributor will make commercially reasonable efforts to sell a Service Agreement to each customer. The terms of the Service Agreements are summarized and attached in Exhibit D attached hereto.

3.19. **Upgrades.** Any upgrades can be purchased at the discretion of the Distributor.

3.20. **First Line Field Service.** Distributor will provide to all Customers, remotely and on-site when needed, routine maintenance and service and timely response to special requests for service of all installed Products in the Territory.

3.21. **Spare Parts Inventory.** Distributor will maintain a spare parts inventory at its cost, as detailed under Exhibit F, to support Customers. Accuray currently offer three (3) different Distributor Spare Parts Kits, and Distributor may select which Spare Parts Kit it wishes to purchase. Distributor is willing to ship spare parts to locations outside the Territory as requested by Accuray, and Accuray will reimburse Distributor for the direct cost of such activity.

3.22. **Records and Reports.**

3.22.1. **Reports.** Within thirty (30) days after the end of each quarter, Distributor will provide Accuray with a written report that includes: (i) Distributor's sales and

shipments of each Product for that quarter, by dollar volume and number of units, both in the aggregate and for such categories as Accuray may designate from time to time; (ii) service reports detailing all uptime and parts warranty issues; (iii) CyberKnife utilization reports: and (iv) any other information requested by Accuray. Distributor's report will comply in form and substance with Accuray's reporting requirements, as they are determined by Accuray and communicated to Distributor in writing from time to time.

3.22.2. **Notification.** Distributor will promptly notify Accuray in writing of any: (i) claim or proceeding involving the Products; or (ii) claimed or suspected Product defects.

3.22.3. **Records.** During the term of this Agreement and for a period of three (3) years after any termination or expiration thereof, Distributor will maintain complete and accurate books, records and accounts relating to the distribution of the Products, and will permit Accuray's authorized representatives to examine them on reasonable prior notice.

3.23. **Compliance with Laws.**

3.23.1. **Within the Territory.** When Products are being shipped to Distributor, unless the particular Purchase Order provides otherwise, Distributor shall be responsible for all import duties and other import, licensing and immigration formalities which must be complied with in order for the Products to be lawfully imported into the Territory or the Services to be lawfully performed in the Territory. In addition, compliance with regulatory and all other laws and regulations in the Territory are the responsibility of Distributor. Distributor will notify Accuray of any impending changes to Territory laws or regulatory requirements that pertain to, and may necessitate modifications to, the Products or Services.

3.23.2. **United States laws.** Distributor understands that, because it is distributing the Products and Services of Accuray, a company subject to the laws of the United States of America, Distributor must, when carrying out its duties under this Agreement, avoid violations of certain of such laws. These include, but are not necessarily limited to, the following:

3.23.2.1 Restrictive Trade Practices or Boycotts, U.S. Code of Federal Regulations Title 15, Chapter VII, Part 760.

3.23.2.2 Foreign Corrupt Practices Act, U.S. Code Title 15, § 78.

3.23.2.3 Export Controls, imposed by U.S. Executive Order or implementing regulations of the U.S. Departments of Commerce, Defense or Treasury.

3.23.3. **No Illegal Activity.** Distributor and its Sub-Distributors shall not engage in any illegal activities. Accuray will not be held responsible for any activities of Distributor or its Sub-Distributor that may be considered to be illegal. For example, Accuray does not support the practice of bribes or under-the-table payments. Distributor will ensure a like clause is included in each agreement it has with its Sub-Distributors, and monitor activities of its Sub-Distributors in the Territory closely. In the event, Accuray deems that the good-will of its Products has been significantly or may potentially be affected by any such illegal activity, then Accuray reserves the right to terminate this Agreement for material breach under Section 5.3 (Termination for Cause), with no further liability to Distributor, or its Sub-Distributor. Accuray assumes no liability for any such practices and Distributor

hereby indemnifies and holds Accuray, its officers and assigns, harmless from any and all such activities of Distributor or its Sub-Distributors.

3.24. **Translations.** To the extent it deems necessary, Accuray will translate or localize any product specifications, user manuals and promotional literature Accuray has provided to Distributor. If Accuray performs such translation, Accuray may, at its sole option, charge Distributor for the cost of translations. If Accuray does not elect to translate such materials, and Distributor decides to do so on its own, Distributor assumes all liability for as well as indemnifies and holds Accuray harmless from any and all issues and claims relating to such translations or localization. Accuray reserves the right to request review and modification of such translated materials.

3.25. **Insurance.** Distributor shall obtain and keep in full force and effect during the Term of this Agreement (and thereafter until all Projects as to which Accuray has accepted an Purchase Order from Distributor have been completed) all insurance required by and in compliance with local laws in the Territory, which shall be equivalent to general and products liability and workers' compensation insurance on an occurrence basis with coverage limits (i) in the normal and customary business of a medical device distributor and (ii) sufficient to provide coverage of any claim which may reasonably arise out of the actions or inactions of that party related to this Agreement or the business relationship between the parties. Distributor shall provide to Accuray from time to time while its obligation under this paragraph is in effect certificates evidencing such insurance, which certificates shall expressly provide that the underlying coverage cannot be cancelled without at least thirty (30) days' written notice to Accuray.

3.26. **Competing Products.** During the Term of this Agreement, Distributor will not sell, offer for sale, promote the sale of, distribute or represent in any way products or services which are competitive with the Products or Services.

4. Compensation and Payment

4.1. **Compensation.** Except as otherwise provided herein, Distributor's only compensation for its efforts on Accuray's behalf shall be the margins it earns on the resale of Products and Services, and Distributor shall bear all of the expenses which it incurs in making those efforts.

4.2. **Payment.** Distributor shall be solely responsible for determining the creditworthiness of and collecting payment from its Customers. The risk of non-collection from the Customer will be borne entirely by Distributor, which shall be responsible for making timely payment to Accuray for Products and Services whether or not Distributor is successful in collecting from its Customer.

5. Term and Termination

5.1. **Term.** The Term of this Agreement shall begin on the Effective Date and continue until , unless extended or sooner terminated in accordance with this Section 5.

5.2. **Renewal.** This Agreement will be renewed for additional period of year(s), if Distributor has carried out its duties under this Agreement, including meeting the minimum volume of purchases and shipments set forth in Exhibit B, as updated in accordance with the following, and Accuray Sales & Marketing Department reasonably believes that the Distributor is following Accuray's market strategies. Accuray and Distributor will meet approximately one hundred eighty (180) days prior to the termination date and agree in

writing upon a volume of business, a number of Purchase Orders, and any other terms, for the subsequent renewal period. The volume of business and number of Purchase Orders for each renewal period shall reflect an increase in units over the numbers determined for the previous period, unless Accuray reasonably determines at its sole discretion that market conditions would not so permit.

5.3. **Termination for Cause.** Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure it within forty-five (45) days after written notice of the breach is given by the non-breaching party, provided that, as to a breach which cannot be fully cured within forty-five (45) days, then the parties shall agree in writing on a resolution plan and a reasonable timeline for such cure period, and that breach shall be deemed timely cured if the cure is completed within the agreed upon timeline. The effective date of termination shall be the date of expiration of the cure period without a cure having occurred.

5.4. **Termination Without Cause.** Either party may terminate this Agreement with six (6) months prior written notice to the other party. Each party shall diligently pursue its obligations under this Agreement until the date of termination.

5.5. **Termination Upon Change in Control.** Accuray shall have the right to terminate this Agreement in the event of a Change in Control, acquisition by a third party or a global change in distributorship structure upon six (6) months advance written notice to Distributor. A global change in distribution structure may be when Accuray, in its sole discretion and in its own best interests, determines the need to change the distribution channels, structure, or arrangements on a global basis.

5.6. **Effect of Termination.** In the event of termination, the effect of such termination shall be as follows:

5.6.1. **Sales in Process.** This Section 5.6.1 shall only apply in cases of Termination Without Cause (Section 5.4) and Termination Upon Change in Control (Section 5.5).

5.6.1.1. Accuray will accept all Purchase Orders by Distributor within the six (6) months prior to the effective date of termination;

5.6.1.2. Distributor shall pay the non-cancelable, nonrefundable US $450,000 deposit (in accordance with Section 3.9 (Payment)) and submit a customer contract for each Purchase Order submitted under Section 5.6.1 above within three (3) months of the date the Purchase Order was submitted to Accuray; and

5.6.1.3. Distributor shall pay the balance upon presentation of documents evidencing shipment of Products to Distributor or the Customer as designated in the Purchase Order above (in accordance with Section 3.9) such shipment and related payment to be made within nine (9) months from the date of the Purchase Order was submitted to Accuray under Section 5.6.1.

5.6.1.4. Failure of Distributor to meet any of the items in Sections 5.6.1.1, 5.6.1.2, or 5.6.1.3 will relieve Accuray of any obligations to Distributor hereunder.

5.6.2. **Transition of Activities.** Accuray and Distributor agree to negotiate in good faith an orderly transition of Distributor's distribution rights and activities and Distributor agrees to assist in the transition.

5.6.3. **Pending Obligations.** Each party must still fulfill any obligations, including but not limited to pending Purchase Orders, accrued on or before the effective date of such termination.

5.7. **Termination Transition Assistance.** Immediately following termination, as applicable, Distributor shall transfer to Accuray upon Accuray's request: Accuray's parts inventory, which Accuray will repurchase at its original cost; any regulatory clearances, licenses or permits obtained for conduct of the business in Territory; any Confidential Information; and other items as will be negotiated in good faith between the parties. Furthermore, the parties agree to cooperate fully with the other for any reasonable transition assistance required in the case of termination or expiration of this Agreement.

5.8. **Distributor's Right to Support.**

5.8.1. If Distributor has continuing obligations to support Customers, including any Service Agreements, Accuray will continue to provide support to Distributor for it to effectively support such Customers. However, in the event that Distributor fails to provide the same or greater service to any Customer, including uptime guarantees, as provided to Distributor by Accuray under the related service agreement, then Accuray shall have the right to demand that Distributor assign the Customer service agreement to Accuray.

5.8.2. Alternatively, Accuray will have the right to take over support for the Customers and will reimburse Distributor for: any loss of gross revenue from the Customer that will occur less, unless already paid, the cost of support to be provided by Accuray, as reasonably determined and negotiated in good faith.

5.9. **No Termination Compensation.** Distributor waives any rights it may have to receive any compensation or indemnity upon termination or expiration of this Agreement, other than as expressly provided in this Agreement. Distributor acknowledges that it has no expectation and has received no assurances that any investment by Distributor in the promotion of the Products will be recovered or recouped or that Distributor will obtain any anticipated amount of profits by virtue of this Agreement.

5.10. **Accruals.** No termination of this Agreement will terminate any obligation of payment which has accrued prior to the effective date of such termination.

5.11. **Repurchase of Parts and Tools.** Within a reasonable time after the effective date of termination, Distributor can sell all parts either to Accuray or Accuray's designated distributor in the Territory all parts and tools owned by Distributor, which may still commercially reasonably be used to service a CyberKnife in the Territory, at Distributor's cost, without profit.

6. Dispute Resolution

6.1. **Applicable Law.** This Agreement shall be subject to and controlled by the laws of the State of California, not including either the choice of law/conflict of laws rules of California or international treaties (such as the U.N. Convention on Contracts for the International Sale of Goods) which would otherwise be applicable in California. Distributor hereby agrees and submits to a venue in the State of California.

6.2. **Notification and Discussion.** Accuray and Distributor hereby irrevocably and unconditionally agree as follows: Should any dispute arise between the parties relating to this Agreement or the business relationship between the parties, such dispute shall be submitted by one or both parties, in writing, to the Chief Executive Officer of Distributor

and the Chief Executive Officer of Accuray for resolution. The parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy.

6.3. **Process.** Any controversy, claim or dispute arising out of or relating to this Agreement, including without limitation, the construction, interpretation, validity, enforcement, performance, lack or failure of performance or breach of this Agreement, or the rights, duties or liabilities of a party under this Agreement, that cannot be resolved by agreement of the parties within forty-five (45) days of the matter being raised in writing, and either party wishes to pursue the matter, the controversy, claim or dispute shall be referred to further dispute resolution processes in accordance with Exhibit E.

6.4. **Confidential Information.** Any breach of Accuray or Distributor intellectual property or confidential information as described in Section 7 (Confidentiality) below or related obligations of this Agreement will cause the injured party irreparable harm for which money damages shall be an inadequate remedy and difficult to ascertain. Consequently, notwithstanding anything else in this Agreement to the contrary, in the event of any such threatened or actual breach, the injured party will be entitled to seek equitable relief in any court having jurisdiction on any claim based upon the actual or imminent misuse or unauthorized disclosure of the injured party's intellectual property or confidential information, including preliminary injunctions restraining such breach and specific performance of the other party's obligations and covenants in such sections. Such equitable relief shall be in addition, and without prejudice, to any other remedies available to the injured party at law or under this Agreement for any such breach or threatened breach. If the injured party seeks injunctive relief, such action shall not constitute a waiver of the provisions of this Agreement to arbitrate, which shall continue to govern any and every dispute between the parties including, without limitation, the right of damages, permanent injunctive relief, and any other remedy at law or in equity.

7. Confidentiality.

7.1. **Definition.** "Confidential Information" means: (i) any non-public information of a party, including, without limitation, any information relating to a party's current and planned products and services, technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) any other information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally, is identified as "Confidential" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure; and (iii) the specific terms and pricing set forth in this Agreement.

7.2. **Exclusions.** The obligations in Section 7.3 will not apply to the extent any information: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

7.3. **Obligations.** Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement,

provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all commercially reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

8. Indemnities.

8.1. **Accuray Indemnity.** Accuray will defend or settle any action brought against Distributor to the extent that it is based upon a third-party claim that a Product, as provided by Accuray to Distributor under this Agreement, infringes any United States patent or any copyright or misappropriates any trade secret, and will pay any costs and damages made in settlement or awarded against Distributor in final judgment resulting from any such claim, provided that Distributor: (i) gives Accuray prompt notice of any such claim; (ii) gives Accuray sole control of the defense and any related settlement of any such claim; and (iii) gives Accuray, at Accuray's expense, all reasonable information, assistance and authority in connection with the foregoing. Accuray will not be bound by any settlement or compromise that Distributor enters into without Accuray's express prior written consent.

8.2. **Products Liability Indemnity.** Accuray will defend or settle any action brought against Distributor to the extent that it is based upon a third-party claim that a Product, as provided by Accuray to Distributor under this Agreement is unsafe when used according to Accuray's written product specifications for its intended use, and will pay any costs and damages made in settlement or awarded against Distributor in final judgment resulting from any such claim, provided that Distributor: (i) gives Accuray prompt notice of any such claim; (ii) gives Accuray sole control of the defense and any related settlement of any such claim; and (iii) gives Accuray, at Accuray's expense, all reasonable information, assistance and authority in connection with the foregoing. Accuray will not be bound by any settlement or compromise that Distributor enters into without Accuray's express prior written consent.

8.3. **Injunctions.** If Distributor's rights to use and distribute a Product under the terms of this Agreement is, or in Accuray's opinion is likely to be, enjoined due to the type of claim specified in Section 8.1 (Accuray Indemnity), then Accuray may, at its sole option and expense: (i) procure for Distributor the right to continue to use and distribute such Product under the terms of this Agreement; (ii) replace or modify such Product so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite Accuray's reasonable efforts, then Accuray may terminate Distributor's rights and Accuray's obligations hereunder with respect to such Product and credit to Distributor the pro-rated portion amounts paid for such Product during the twelve (12) months prior to the date Accuray issues such a credit, provided that all units of such Product are returned to Accuray in an undamaged condition.

8.4. **Indemnity Exclusions.** Accuray will have no obligation under Sections 8.1 (Accuray Indemnity) or 8.2 (Products Liability Indemnity) for any third-party claim to the extent that

such claim results from: (i) use of any Products not in accordance with Accuray's written product specifications; (ii) use or combination of the Products with other items, such as other equipment, processes, programming applications or materials not furnished by Accuray; (iii) compliance by Accuray with Distributor's or Distributor's customer's designs, specifications or instructions; (iv) modifications to a Product not made by or at the express written direction of Accuray; (v) Distributor's failure to use updated or modified Products provided by Accuray; (vi) Distributor's use or distribution of a Product other than in accordance with this Agreement or (vii) Distributors contracts with other manufacturers, including Elekta and manufacturers of products and services that compete with Accuray. The foregoing clauses (i) to (vii) are referred to collectively as "Indemnity Exclusions".

8.5. **Limitation.** THE FOREGOING PROVISIONS OF THIS SECTION 8 SET FORTH ACCURAY'S SOLE AND EXCLUSIVE LIABILITY AND DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND OR PRODUCTS LIABILITY.

8.6. **Distributor Indemnity.** Distributor will defend or settle, indemnify and hold Accuray harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) Distributor's acts or omissions; (ii) any misrepresentations made by Distributor with respect to Accuray or the Products or Services; or (iii) an Indemnity Exclusion.

9. Liability.

9.1. **Exclusion of Certain Damages.** IN NO EVENT WILL ACCURAY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOSS OF USE, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL), OR FOR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY ACCURAY PRODUCTS OR SERVICES PROVIDED BY ACCURAY, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT ACCURAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9.2. **Total Liability.** ACCURAY'S TOTAL LIABILITY TO DISTRIBUTOR UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM DISTRIBUTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE A CLAIM FOR LIABILITY ARISES HEREUNDER.

9.3. **Basis of Bargain.** The parties expressly acknowledge and agree that Accuray has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Accuray and Distributor and form an essential basis of the bargain between the parties.

10. Miscellaneous Provisions

10.1. **Publicity.** Distributor may not use Accuray's name or trademarks on its literature, signs, or letterhead, nor may it make press releases or other public statements disclosing its relationship with Accuray under this Agreement or otherwise without the prior written consent of Accuray, which shall not be unreasonably withheld.

10.2. **Good Will.** Distributor agrees that it will help develop and work to preserve the good will of Accuray within the Territory, and will not unreasonably harm that good will. In the event of termination of this Agreement for any reason, Distributor will not do anything to unreasonably harm the good will of Accuray within the Territory.

10.3. **Titles.** Titles of the various paragraphs and sections of this Agreement are for ease of reference only and are not intended to change or limit the language contained in those paragraphs and sections.

10.4. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent. However, Accuray may assign this Agreement, without Distributor's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

10.5. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with the carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with the carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:

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

with cc to: General Counsel

To Distributor:

10.6. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

10.7. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

10.8. **Survival.** The expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth herein which (a) the parties have expressly agreed will survive any such expiration or termination; or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration. In addition to the foregoing, the following provisions shall survive any termination or expiration of this Agreement: Section 2.7 (Warranty); Section 2.8.3 (Warranty Exclusions); Section 3.17 (Warranty); Section 3.25 (Insurance); Section 5.6 (Effect

of Termination); Section 5.7 (Termination Transition Assistance); Section 5.8 (Distributor's Right to Support); Section 6 (Dispute Resolution); Section 7 (Confidentiality); Section 8 (Indemnities); Section 9 (Liability) and Section 10 (Miscellaneous Provisions).

10.9. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

10.10. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

10.11. **English Language Requirement.** This Agreement is written in the English Language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects.

10.12. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

10.13. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR:	**ACCURAY INCORPORATED:**
By:	**By:**
Print name:	**Print name:** Robert E. McNamara
Title:	**Title:** Sr. Vice President & Chief Financial Officer
Date:	**Date:**

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

EXHIBIT A

PRODUCTS AND SERVICES (INCLUDING CURRENT PRICING)

BASE CYBERKNIFE® G4 CONFIGURATION—DISTRIBUTOR PRICING

QTY	PRODUCT DESCRIPTION CYBERKNIFE® ROBOTIC RADIOSURGERY SYSTEM ROBOTIC TREATMENT DELIVERY SYSTEM Imaging System	PART #'s 022986 021942	PRICE IN USD TBD Incl.	PRICE IN EURO TBD Incl.
1	In-floor Imaging Frame		Incl.	Incl.
2	Amorphous Silicon Detectors (40 cm × 40 cm)		Incl.	Incl.
2	X-Ray Generators		Incl.	Incl.
2	X-Ray Sources		Incl.	Incl.
1	Rack mounted Imaging System PC		Incl.	Incl.
	Linear Accelerator	**021938**	**Incl.**	**Incl.**
1	Compact 6MV Linac—600 MU/minute dose rate		Incl.	Incl.
1	Secondary Collimator Kit—5 mm, 7.5 mm, 10 mm, 12.5 mm, 15 mm, 20 mm, 25 mm, 30 mm, 35 mm, 40mm, 50 mm, 60 mm, Blank, Laser Collimator		Incl.	Incl.
1	Control Modulator Control Chassis		Incl.	Incl.
1	Contact Detection System		Incl.	Incl.
	Robotic Manipulator System	**022866**	**Incl.**	**Incl.**
1	Robotic Manipulator KR240		Incl.	Incl.
1	Manipulator Control Software		Incl.	Incl.
1	In-Floor Manipulator Frame		Incl.	Incl.
	AXUM™ Automated Patient Positioning System	**020680**	**Incl.**	**Incl.**
1	Treatment Couch and Couchtop		Incl.	Incl.
1	Treatment Couch Controller Software		Incl.	Incl.
1	Treatment Couch Hand Pendant		Incl.	Incl.
1	Treatment Couch Readout Display		Incl.	Incl.
1	Treatment Couch Head Baseplate		Incl.	Incl.
2	Med-Tec Indexed CT Overlay Kits (CT Overlay + Head Baseplate)		Incl.	Incl.
	Sub-System Controls and Hardware Components	**Various**	**Incl.**	**Incl.**
1	SGI Octane II Workstation (Treatment Delivery Computer)		Incl.	Incl.
	21" Flat Panel Display		Incl.	Incl.
1	Equipment Rack		Incl.	Incl.
1	Operator Control Console		Incl.	Incl.
1	Interface Control Chassis		Incl.	Incl.
1	E-Stop Control Chassis		Incl.	Incl.
1	Target Locating Subsystem Control Chassis		Incl.	Incl.
1	Power Distribution Unit		Incl.	Incl.
1	17" High resolution CRT Monitor		Incl.	Incl.

1	Keyboard & Mouse		Incl.	Incl.
1	Serial Port Server		Incl.	Incl.
1	SMART (Uninterruptible Power Supply)		Incl.	Incl.
1	2550n HP Color Laser Printer		Incl.	Incl.
	Treatment Delivery System Software	**Various**	**Incl.**	**Incl.**
1	Treatment Delivery Software		Incl.	Incl.
1	Treatment Delivery Software License		Incl.	Incl.
1	Cranial Treatment Skull Tracking License		Incl.	Incl.
1	Extra-cranial Treatment with Fiducial Tracking License		Incl.	Incl.
1	Patient Record Database		Incl.	Incl.
	TREATMENT PLANNING SYSTEM			
	CyRIS™ MultiPlan—Treatment Planning System	**021695**	Incl.	Incl.
1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		Incl.	Incl.
	Monitor:(1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel			
	1 Year Manufacturer (DELL) Warranty			
1	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 (Perpetual) License MultiPlan—Treatment Planning System			
1	Startup Wizard and Planning Templates			
	CLINICAL APPLICATION MODULES			
	Synchrony™ Respiratory Tracking System	**023119**	Incl.	Incl.
1	Synchrony computer and Synchrony software		Incl.	Incl.
1	Synchrony Camera Array		Incl.	Incl.
1	Fiber Optic Interface Kit		Incl.	Incl.
1	Synchrony Single-Patient Use Starter Kit (3 individual patient kits)		Incl.	Incl.
	Each Single-Patient Use kits contains:			
	—Synchrony Tracking Vest (small, medium or large)			
	—Tracking Marker Assembly (3 Markers attached to cables and a connector)			
	—Kit Storage Pouch with IFU & Identification Card			
	ACCESSORIES & TRAINING			
	QA Tools	**020580**	Incl.	Incl.
1	Anthropomorphic 6D Head Phantom		Incl.	Incl.
1	Ball Cube		Incl.	Incl.
1	Pre-notched Dosimetry Film (20 Pieces)		Incl.	Incl.
1	Digital Level ($^{1}/_{10}$ degree)		Incl.	Incl.

1	Ion Chamber Test Fixture		Incl.	Incl.
1	ISO Post Assembly		Incl.	Incl.
1	Alignment Ball		Incl.	Incl.
1	Pointer Calibration & Front Pointer		Incl.	Incl.
1	AQA Tools		Incl.	Incl.
	Manuals	**Various**	**Incl.**	**Incl.**
1	CyberKnife® System Manuals		Incl.	Incl.
1	Robotic Manipulator System Manuals		Incl.	Incl.
1	Chiller Manual		Incl.	Incl.
1	X-ray Detector Manuals		Incl.	Incl.
1	Accuray 6MEV Medical X-ray CD		Incl.	Incl.
	Training		**Incl.**	**Incl.**
1	Technical & Clinical—5 people		Incl.	Incl.
1	Onsite Training for first patient treatment		Incl.	Incl.
1	Basic Physics and QA		Incl.	Incl.

NOTE **Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices shown in USD or Euros as specified.**

	ADDITIONAL OPTIONS **Synchrony™ Respiratory Tracking System Accessories**	**PART #**	**PRICE IN USD**	**PRICE IN EURO**
1	Synchrony Single-Patient Use Kit, 5 Pack, Small	20904	TBD	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Medium	20905	TBD	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Large	20906	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Small	20883	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Medium	20891	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Large	20893	TBD	TBD
1	Synchrony Patient Kit, 10 Pack, Assorted	20894	TBD	TBD
	Includes 3 Small, 4 Medium & 3 Large Vests			
	Xsight™ Spine Tracking System	**22078**	**TBD**	**TBD**
1	1 Perpetual License Fiducial-Less Spine Tracking Software			
1	1 Xsight QA Phantom	20855		
	SGI Computer Upgrade Components			
1	73 BG Hard Drive	20534	TBD	TBD
1	SGI 181 GB Hard Drive	20533	TBD	TBD
1	SGI Memory, 1GB (2 × 512Mb)	18672	TBD	TBD
1	Cable Kit Add Octane to Hub	18326	TBD	TBD
1	20' Flat Panel Monitor	20483	TBD	TBD

	CyRIS™ InView—Image Fusion and Contouring Station	**22086**		
1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		TBD	TBD
	Monitor: (1) 21" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel			
	1 Year Manufacturer (DELL) Warranty			
1	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 Perpetual License InView—Image Fusion and Contouring Station			
1	Software Maintenance Fee		TBD	TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter			
	CyRIS™ MultiPlan—Treatment Planning System	**21695**		
1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		TBD	TBD
	Monitor: (1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel			
	1 Year Manufacturer (DELL) Warranty			
1	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 Perpetual License MultiPlan—Treatment Planning System			
1	Software Maintenance Fee		TBD	TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter			
	Additional Patient Setup Items			
1	Additional Indexed CT Overlay Kits (CT Overlay + Head Baseplate)		TBD	TBD
1	CT Top Kit—Siemens Volume	20775	TBD	TBD
1	CT Top Kit—Siemens Somatom	20776	TBD	TBD
1	CT Top Kit—GE LiteSpeed	20777	TBD	TBD
1	CT Top Kit—GE Discovery	20778	TBD	TBD
1	CT Top Kit—GE HiSpeed	20779	TBD	TBD
1	Immobilization Starter Kit	021037	TBD	TBD
	Body Treatment Fiducial Kit			
1	Fiducial Instrument Set	18985	TBD	TBD
1	Single Pk Fiducial	19005	TBD	TBD
1	5 Pk Fiducial	19006	TBD	TBD
1	10 Pk Fiducial	19007	TBD	TBD
	Additional QA Options			
1	Alignment jig 6D—20cm	17722	TBD	TBD

1	Head Phantom Kit (contains ball cube)	18161	TBD	TBD
1	GAF Chromic Film (20 pack)	17895	TBD	TBD
1	Film Ball cube (20 pack)	19366	TBD	TBD
1	Body Phantom Kit (contains film cube)	17801	TBD	TBD
1	Color Dye Diffuse Printer **(Upgrade) (Not defined or Released)**	TBD	TBD	TBD
1	AQA Tools	22349	TBD	TBD
	System Installation		**TBD**	**TBD**
1	Floor Frame Install			
1	System Qualification			
1	Installation Kit			
	Extended Parts Warranty (Parts Only, No Labor)		**TBD**	**TBD**
	One Year—Replacement of Defective Parts			
	Emerald Agreement (Basic Service and Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
	Ruby Agreement (Software Upgrades, Basic Service and Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
	Diamond Agreement (Software & Hardware Upgrades, Basic Service & Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
NOTE	**Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices in USD or Euros as specified.**			

BASE CYBERKNIFE® G3 CONFIGURATION—DISTRIBUTOR PRICING

QTY	PRODUCT DESCRIPTION CYBERKNIFE® ROBOTIC RADIOSURGERY SYSTEM ROBOTIC TREATMENT DELIVERY SYSTEM Imaging System	PART #'s 21682 20829	PRICE IN USD TBD Incl.	PRICE IN EURO TBD Incl.
1	Imaging Stands (Low)		Incl.	Incl.
2	Amorphous Silicon Detectors (20 cm × 20 cm)		Incl.	Incl.
2	X-Ray Generators		Incl.	Incl.
2	X-Ray Sources		Incl.	Incl.
1	Rack mounted Target Locating PC		Incl.	Incl.
	(Requires Octane Software—See CyberKnife Software System below)			
	Linear Accelerator	**20404**	**Incl.**	**Incl.**
1	Compact 6MV Linac—400 MU/minute		Incl.	Incl.
1	Secondary Collimator Kit—5 mm, 7.5 mm, 10 mm, 12.5 mm, 15 mm, 20 mm, 25 mm, 30 mm, 35 mm, 40mm, 50 mm, 60 mm, Blank, Laser Collimator		Incl.	Incl.
1	Control Modulator Control Chassis		Incl.	Incl.
	Robotic Manipulator System	**20554**	**Incl.**	**Incl.**
1	Robot Manipulator KR210		Incl.	Incl.
1	Robot Control Software		Incl.	Incl.
	AXUM™ Automated Patient Positioning System	**20680**	**Incl.**	**Incl.**
1	AXUM™ Treatment Couch			
1	AXUM™ Treatment Couchtop			
1	AXUM™ Controller Software			
1	AXUM™ Hand Pendant			
1	AXUM™ Readout Display			
1	AXUM™ Head Baseplate			
2	Med-Tec Indexed CT Overlay Kits (CT Overlay + Head Baseplate)			
	Sub-System Controls and Hardware Components	**Various**	**Incl.**	**Incl.**
1	Equipment Rack		Incl.	Incl.
1	Operator Control Console		Incl.	Incl.
1	Interface Control Chassis		Incl.	Incl.
1	E-Stop Control Chassis		Incl.	Incl.
1	Target Locating Subsystem Control Chassis		Incl.	Incl.
1	Power Distribution Unit		Incl.	Incl.
1	17" High resolution CRT Monitor		Incl.	Incl.
1	Keyboard & Mouse		Incl.	Incl.
1	Serial Port Server		Incl.	Incl.
1	**SGI Octane II Workstation (Primary Treatment Delivery System and Treatment Planning System)**		Incl.	Incl.

	21" Flat Panel (Optional 21" CRT Monitor Available—see options section)			
1	SMART (Uninterruptible Power Supply)		Incl.	Incl.
1	2550n HP Color Laser Printer		Incl.	Incl.
	Treatment Delivery System Software	**20389**	**Incl.**	**Incl.**
1	**Octane Software**		Incl.	Incl.
1	Treatment Delivery Software License		Incl.	Incl.
1	Cranial Treatment Skull Tracking License		Incl.	Incl.
1	Extra-cranial Treatment with Fiducial Tracking License		Incl.	Incl.
1	Patient Record Database		Incl.	Incl.
	TREATMENT PLANNING SYSTEM			
	CyRIS™ MultiPlan™—Treatment Planning System	**21695**	**Incl.**	**Incl.**
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**			
	Monitor: (1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel			
	1 Year Manufacturer (DELL) Warranty			
	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 Perpetual License MultiPlan—Treatment Planning System			
	CLINICAL APPLICATION MODULES			
	Synchrony™ Respiratory Tracking System	**23119**	**Incl.**	**Incl.**
1	Synchrony computer and Synchrony software		Incl.	Incl.
1	Synchrony Camera Array		Incl.	Incl.
1	Fiber Optic Interface Kit		Incl.	Incl.
1	Synchrony Single-Patient Use Starter Kit (3 individual patient kits)		Incl.	Incl.
	Each Single-Patient Use kits contains:			
	—Synchrony Tracking Vest (small, medium or large)			
	—Tracking Marker Assembly (3 Markers attached to cables and a connector)			
	—Kit Storage Pouch with IFU & Identification Card			
	ACCESSORIES & TRAINING			
	QA Tools	**20580**	**Incl.**	**Incl.**
1	Anthro 6D Head Phantom	18880	Incl.	Incl.
1	Ball Cube	19364	Incl.	Incl.
1	Pre-notched Dosimetry Film (20 Pieces)	19366	Incl.	Incl.
1	Digital Level ($^{1}/_{10}$ degree)	17832	Incl.	Incl.

1	Ion Chamber Test Fixture	10181	Incl.	Incl.
1	Assy ISO Post	18901	Incl.	Incl.
1	Alignment Ball	16954	Incl.	Incl.
1	Pointer Calibration & Front Pointer	010370 & 016997	Incl.	Incl.
1	AQA Tools		Incl.	Incl.
	Manuals and CD's	**Various**	**Incl.**	**Incl.**
1	CyberKnife® System Manuals & CD's		Incl.	Incl.
1	Kuka® Manipulator System Manuals		Incl.	Incl.
1	Chiller Manual		Incl.	Incl.
1	X-ray Detector Manuals		Incl.	Incl.
1	Accuray 6MEV Medical X-ray CD		Incl.	Incl.
	Training		**Incl.**	**Incl.**
1	Technical & Clinical—5 people		Incl.	Incl.
1	Onsite Training for first patient treatment		Incl.	Incl.
1	Basic Physics and QA		Incl.	Incl.

NOTE **Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices in USD or Euros as specified.**

	ADDITIONAL OPTIONS **Synchrony™ Respiratory Tracking System Accessories**	**PART #**	**PRICE IN USD**	**PRICE IN EURO**
1	Synchrony Single-Patient Use Kit, 5 Pack, Small	20904	TBD	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Medium	20905	TBD	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Large	20906	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Small	20883	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Medium	20891	TBD	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Large	20893	TBD	TBD
1	Synchrony Patient Kit, 10 Pack, Assorted	20894	TBD	TBD
	Includes 3 Small, 4 Medium & 3 Large Vests			
	Xsight™ Spine Tracking System	**22078**	**TBD**	**TBD**
	1 Perpetual License Fiducial-Less Spine Tracking Software			
	1 Xsight QA Phantom	20855		
	Linear Accelerator Upgrade: 600 MU/minute	**23120**	**TBD**	**TBD**
	Imaging System Upgrade		**TBD**	**TBD**
1	**Imaging System Upgrade: In Floor**	**23121**	TBD	TBD
1	**Imaging System Upgrade: On Floor**	**23122**	TBD	TBD
	SGI Computer Upgrade Components			
1	73 BG Hard Drive	20534	TBD	TBD

1	SGI 181 GB Hard Drive	20533	TBD	TBD
1	SGI Memory, 1GB (2 × 512Mb)	18672	TBD	TBD
1	Cable Kit Add Octane to Hub	18326	TBD	TBD
1	20' Flat Panel Monitor	20483	TBD	TBD
	CyRIS™ InView—Image Fusion and Contouring Station	**22086**		
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**		TBD	TBD
	Minimal Processing Capability: Intel Pentium IV, 3.2GHz, Intel EM64T, 1m L2 Cache, 800 FSB MHz CPU			
	Memory (RAM)—4GB, 533MHz, DDR2 ECC SDRAM 4X1GB			
	Hard Drive: Minimum Capacity: 160 GB SATA 7200 RPM			
	Video Card: nVidia, Quadro 3400, 256MB, Dual VGA or DVI or Better		Incl.	
	Key Board: Entry Level Keyboard PS/2, No Hot Keys			
	CD-ROM: 48x CD-RW and 16 XD DVD+/-RW			
	Mouse: DELL USB 2-Button Optical Mouse with Scroll			
	Monitor: (1) 21" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		Incl.	
	1 Year Manufacturer (DELL) Warranty			
	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 Perpetual License InView—Image Fusion and Contouring Station			
	Software Maintenance Fee		TBD	TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter			
	CyRIS™ MultiPlan—Treatment Planning System	**21695**	**TBD**	**TBD**
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**			
	Monitor: (1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		Incl.	
	1 Year Manufacturer (DELL) Warranty			
	Product Software			
	Microsoft Windows XP Professional SP1, NTFS w/Media			
	1 Perpetual License MultiPlan—Treatment Planning System			
	Software Maintenance Fee		TBD	TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter			

	Additional Patient Setup Items			
1	**Additional Indexed CT Overlay Kits (CT Overlay + Head Baseplate)**		TBD	TBD
1	CT Top Kit—Siemens Volume	20775	TBD	TBD
1	CT Top Kit—Siemens Somatom	20776	TBD	TBD
1	CT Top Kit—GE LiteSpeed	20777	TBD	TBD
1	CT Top Kit—GE Discovery	20778	TBD	TBD
1	CT Top Kit—GE HiSpeed	20779	TBD	TBD
1	Immobilization Starter Kit	021037	TBD	TBD
	Body Treatment Fiducial Kit			
1	Fiducial Instrument Set	18985	TBD	TBD
1	Single Pk Fiducial	19005	TBD	TBD
1	5 Pk Fiducial	19006	TBD	TBD
1	10 Pk Fiducial	19007	TBD	TBD
	Additional QA Options			
1	Alignment jig 6D—20cm	17722	TBD	TBD
1	Head Phantom Kit (contains ball cube)	18161	TBD	TBD
1	GAF Chromic Film (20 pack)	17895	TBD	TBD
1	Film Ball cube (20 pack)	19366	TBD	TBD
1	Body Phantom Kit (contains film cube)	17801	TBD	TBD
1	Color Dye Diffuse Printer **(Upgrade) (Not defined or Released)**	TBD	TBD	TBD
	System Installation		**TBD**	**TBD**
1	Floor Frame Install			
1	System Qualification			
1	Installation Kit			
	Extended Parts Warranty (Parts Only, No Labor)		**TBD**	**TBD**
	One Year—Replacement of Defective Parts			
	Emerald Agreement (Basic Service and Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
	Ruby Agreement (Software Upgrades, Basic Service and Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
	Diamond Agreement (Software & Hardware Upgrades, Basic Service & Parts)		**TBD**	**TBD**
	Requires Distributor to provide First-Line Field Service.			
	Includes service for up to 2 Multiplan and 3 InView systems			
NOTE	**Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices in USD or Euros as specified.**			

EXHIBIT B

PRODUCT AND SERVICE MINIMUM VOLUMES

Distributor agrees to purchase and pay for, at a minimum, during the initial term of the contract and Accuray shall ship, Systems on the dates specified below:

- *TBD*

EXHIBIT C

TRAINING

Training is included with the purchase of a CyberKnife to the extent listed in **Exhibit A**. Accuray will be responsible for the travel and accommodation expenses of its personnel. Distributor will be responsible for the travel and accommodation expenses of Customer and any Distributor personnel.

Additional training maybe purchased from Accuray according to the following price list, which may be updated from time to time.

Additional Training

#	Course	Duration	Price †
1	CyberKnife Product Training—Surgeon	1.5 Days	TBD
1	CyberKnife Product Training—RTT	1.5 Days	TBD
1	CyberKnife Product Training—Radiation Oncologist	2.5 Days	TBD
1	CyberKnife Product Training—Physicist	4.5 Days	TBD

† Payable to the Accuray Training Department in advance. Training will be held at Accuray Corporate Headquarters or at a designated training center. Travel and accommodation not included.

EXHIBIT D

ACCURAY INTERNATIONAL SERVICE AGREEMENTS TERMS SUMMARY ±

	Terms	Accuray to Customer U$D Pricing	Accuray to Distributor U$D Pricing	Accuray to Distributor €uro Pricing
Extended Parts Warranty	• Term: 1 year (after Standard Warranty Year), Optional 2nd • Replacement Parts only • No Updates or Bug Fixes • No Upgrades • No Uptime Guarantee • No Labor	$175,000 / year	TBD	TBD
Emerald Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Updates & Bug Fixes only • No Upgrades • Service: 8am—9pm local time • First Line Field Service—Distributor, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95% ‡‡	$275,000 / year $72,000 / quarter $25,000 / month	TBD	TBD
Ruby Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Updates & Bug Fixes • Upgrades (2 SW/year)—when and if available • Service: 8am—9pm local time • First Line Field Service—Distributor, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95% ‡‡	$380,000 / year $98,000 / quarter $34,000 / month	TBD	TBD

Diamond Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Upgrades (2 HW or SW/year)—when and if available • Service: 8am—9pm local time • First Line Field Service—Distributor, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95% ‡‡	$460,000 / year $120,000 / quarter $41,000 / month	TBD	TBD
Additional Upgrade Agreement	• Term: 1, 2, 3 or 4 years • Upgrades (2/year)—when and if available) • Available only to customers with currently effective, paid-up Diamond Elite Service Agreement	$200,000 / year	TBD	TBD

± Int'l Agreements are not cancelable.

‡ Distributor is required under all agreements to provide end customer with same or greater service (including Uptime guarantees) as provided by Accuray.

‡‡ Penalty for failure to meet Uptime guarantee—1 week additional service for each percentage point below 95% (Accuray provides parts, Distributor provides labor for penalty period).

SAMPLE SERVICE AGREEMENTS

The following are samples of the Distributor to Customer versions of the Service Agreements with U.S. Dollar pricing. The sample Service Agreements are by way of example only, and, subject to Section 2.4 (Product and Service Pricing), the specific terms of the agreements are subject to change without notice.

CYBERKNIFE® INTERNATIONAL DIAMOND ELITE SERVICE AGREEMENT

Note: Pursuant to the terms of Distributor's Service Agreement with Accuray, you must provide service equal to or greater than the following terms.

1. *Scope of Service.* This Diamond Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated's ("Accuray") authorized Distributor, ("Distributor"), located at , and ("Customer"), for Distributor to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Distributor as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Upgrades/Enhancements that have a higher list price may be offered as more than a single Upgrade/Enhancement to Customers under this Agreement. If Upgrades/Enhancements that have a higher list price are offered as more than a single Upgrade/Enhancement then they will be offered as such to all customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of [Distributor to Insert Price re InView Service] per year per MultiPlan and [Distributor to Insert Price re MultiPlan Service] per year per InView, as applicable, will be added by Distributor to the Agreement Price set forth below.

- ANNUAL: [Distributor to Insert Price] per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- QUARTERLY: [Distributor to Insert Price] per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- MONTHLY: [Distributor to Insert Price] per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Distributor, installed by Accuray or Distributor engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray or Distributor. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Distributor to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Distributor to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Distributor will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Upgrades/Enhancements may be software, hardware or a combination thereof.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Distributor to offer that particular Upgrade/Enhancement under this Diamond Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Distributor will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Distributor receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Distributor, in accordance with the Notice provision set forth below, at any time up to thirty (30) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Distributor will not provide Diamond coverage for Optional Year 5. If Customer exercises the option, Distributor is obligated to provide Diamond coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Distributor will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Distributor Service will be responsible for scheduling installations. Distributor will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of this Agreement, Distributor will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by

Distributor service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Distributor or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Distributor shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated to CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Distributor or according to Accuray or Distributor instructions or the product notice, shall be considered to be done by and under the direction of Distributor.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Distributor under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Distributor, upon giving Notice to Customer in accordance with Section 15 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Distributor will review Customer's QA logs, and if such logs are not up-to-date, Distributor may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Distributor will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period* [*Note: Distributor must provide service equal or greater to the First Line Field Service, as set forth in Distributor's service agreement with Accuray.*]

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Distributor shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Distributor, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Distributor will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Distributor, by calling Distributor's Customer Support Line at [Note: Distributor will need to provide Customer with an appropriate contact number for 24/7 support], of any problem or defect with the System and, at no charge, provide Distributor and/or Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Distributor and/or Accuray to perform the service. Customer shall have as many service

calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Distributor and/or Accuray service engineers are required to remain on site, Distributor may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Distributor will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Distributor shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Distributor support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime* [*Note: Distributor must provide an Uptime guarantee equal or greater to the one set forth below, as set forth in Distributor's service agreement with Accuray.*]

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Distributor service engineer to work on it ("Downtime").

7.2. *Guarantee.* Distributor will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Distributor to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Distributor's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Distributor, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Distributor. Reports for the previous month's Downtime shall be provided to Distributor on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Distributor achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Distributor shall make a commercially reasonable effort to supply at the time of need or stock with Distributor's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Distributor to perform the required repairs and return the System to good working order. Distributor shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's or Distributor's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Distributor and will be disposed of by Distributor Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Distributor under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray or Distributor including any move of the System from its installation site (other than by or at the express written direction of Accuray or Distributor).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Distributor.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray or Distributor, such action or adjustment shall not reduce Distributor's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation.* Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Distributor's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Distributor for the then current Agreement year. In addition, Distributor shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL DISTRIBUTOR BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED DISTRIBUTOR WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Distributor may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Distributor's assets or the sale of that portion of Distributor's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

14. *Disputes and Governing Laws*

14.1. In the event that a dispute arises between Distributor and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Distributor and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Distributor and Customer shall be resolved in a court of competent jurisdiction in the [Note: Please fill in an appropriate venue], and in no other place, provided that, in Distributor's sole discretion, such action may be heard in some other place designated by Distributor (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof.

No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Distributor:	**To Customer:**
_____	_____
Attention:	Attention:
_____	_____
_____	_____
with cc to:	
_____	

16. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Distributor, a duly authorized representative must be any of the following: [Enter title of person with authority to bind Distributor].

20. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

21. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

CYBERKNIFE® INTERNATIONAL RUBY ELITE SERVICE AGREEMENT

Note: Pursuant to the terms of Distributor's Service Agreement with Accuray, you must provide service equal to or greater than the following terms.

1. *Scope of Service*. This Ruby Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated's ("Accuray") authorized Distributor, ("Distributor"), located at , and ("Customer"), for Distributor to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date*. This Agreement shall be effective as of demonstration of acceptance testing by Distributor as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software containing major new features, functionality and/or performance improvements that would enable the existing software configuration to perform to the level of the next version of the software configuration and designed to replace the older software version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Upgrades/Enhancements that have a higher list price may be offered as more than a single Upgrade/Enhancement to Customers under this Agreement. If Upgrades/Enhancements that have a higher list price are offered as more than a single Upgrade/Enhancement then they will be offered as such to all customers. Examples of such

components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of [Distributor to Insert Price re InView Service] per year per MultiPlan and [Distributor to Insert Price re MultiPlan Service] per year per InView, as applicable, will be added by Distributor to the Agreement Price set forth below.

- o ANNUAL: [Distributor to Insert Price] per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: [Distributor to Insert Price] per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: [Distributor to Insert Price] per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Distributor, installed by Accuray or Distributor engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray or Distributor. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Distributor to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Distributor to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Distributor will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/

Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Any hardware enhancements offered by Accuray will be quoted and sold separately from the software Upgrades/Enhancements provided for in this Agreement.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Distributor to offer that particular Upgrade/Enhancement under this Ruby Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Distributor will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Distributor receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Distributor, in accordance with the Notice provision set forth below, at any time up to thirty (30) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Distributor will not provide Ruby coverage for Optional Year 5. If Customer exercises the option, Distributor is obligated to provide Ruby coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Distributor will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Distributor Service will be responsible for scheduling installations. Distributor will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Distributor will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Distributor service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Distributor or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Distributor shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated to CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Distributor or according to Accuray or Distributor instructions or the product notice, shall be considered to be done by and under the direction of Distributor.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Distributor under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Distributor, upon giving Notice to Customer in accordance with Section 15 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Distributor will review Customer's QA logs, and if such logs are not up-to-date, Distributor may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Distributor will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period* [*Note: Distributor must provide service equal or greater to the First Line Field Service, as set forth in Distributor's service agreement with Accuray.*]

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Distributor shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Distributor, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Distributor will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Distributor, by calling Distributor's Customer Support Line at [Note: Distributor will need to provide Customer with an appropriate contact number for 24/7 support], of any problem or defect with the System and, at no charge, provide Distributor and/or Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Distributor and/or Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Distributor and/or Accuray service engineers are required to remain on site, Distributor may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Distributor will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and

will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Distributor shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Distributor support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime* [*Note: Distributor must provide an Uptime guarantee equal or greater to the one set forth below, as set forth in Distributor's service agreement with Accuray.*]

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Distributor service engineer to work on it ("Downtime").

7.2. *Guarantee*. Distributor will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation*. Downtime will be calculated from the time a down System call is received by Distributor to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Distributor's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Distributor, will be calculated as Uptime.

7.4. *Reports*. Customer is responsible for recording and reporting Downtime to Distributor. Reports for the previous month's Downtime shall be provided to Distributor on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee*. For each year of the term of this Agreement, if Distributor achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Distributor shall make a commercially reasonable effort to supply at the time of need or stock with Distributor's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Distributor to perform the required repairs and return the System to good working order. Distributor shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's or Distributor's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Distributor

and will be disposed of by Distributor Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Distributor under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray or Distributor including any move of the System from its installation site (other than by or at the express written direction of Accuray or Distributor).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Distributor.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray or Distributor, such action or adjustment shall not reduce Distributor's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Distributor's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Distributor for the then current Agreement year. In addition, Distributor shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL DISTRIBUTOR BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL

DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED DISTRIBUTOR WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Assignment*. Neither party may assign this Agreement without the other party's prior written consent, except that Distributor may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Distributor's assets or the sale of that portion of Distributor's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

14. *Disputes and Governing Laws*

14.1. In the event that a dispute arises between Distributor and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Distributor and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Distributor and Customer shall be resolved in a court of competent jurisdiction in the [Note: Please fill in an appropriate venue], and in no other place, provided that, in Distributor's sole discretion, such action may be heard in some other place designated by Distributor (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be

sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Distributor:	**To Customer:**
Attention:	
with cc to:	

16. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Distributor, a duly authorized representative must be any of the following: [Enter title of person with authority to bind Distributor].

20. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

21. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

CYBERKNIFE® INTERNATIONAL EMERALD ELITE SERVICE AGREEMENT

Note: Pursuant to the terms of Distributor's Service Agreement with Accuray, you must provide service equal to or greater than the following terms.

1. *Scope of Service*. This Emerald Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated's ("Accuray") authorized Distributor, ("Distributor"), located at , and ("Customer"), for Distributor to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date*. This Agreement shall be effective as of demonstration of acceptance testing by Distributor as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. *Definitions*:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1"or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5"). Customer may exercise the option for Optional Year 5 by letter sent to Distributor, in accordance with the Notice provision set forth below, at any time up to thirty (30) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Distributor will not provide Emerald coverage for Optional Year 5. If Customer exercises the option, Distributor is obligated to provide Emerald coverage on same terms as the previous Agreement years. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of [Distributor to Insert Price re InView Service] per year per MultiPlan and [Distributor to Insert Price re MultiPlan Service] per year per InView, as applicable, will be added by Distributor to the Agreement Price set forth below.

- o ANNUAL: [Distributor to Insert Price] per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: [Distributor to Insert Price] per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: [Distributor to Insert Price] per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment To Be Covered*

3.1. This Agreement is available only for equipment that was purchased directly from Distributor, installed by Accuray or Distributor engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray or Distributor. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Distributor to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Distributor will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Distributor service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately

by Customer from Distributor or taken under this Agreement as a System Upgrade/Enhancement.

4.2. Customer is not entitled to any Upgrades/Enhancements or New Versions/New Products under this Agreement. Customer may purchase Upgrades/Enhancements and New Versions/New Products separately, and such Upgrades/Enhancements or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the service periods, Distributor shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated to CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Distributor or according to Accuray or Distributor instructions or the product notice, shall be considered to be done by and under the direction of Distributor.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Distributor under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Distributor, upon giving Notice to Customer in accordance with Section 15 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Distributor will review Customer's QA logs, and if such logs are not up-to-date, Distributor may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Distributor will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period* [*Note: Distributor must provide service equal or greater to the First Line Field Service, as set forth in Distributor's service agreement with Accuray.*]

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Distributor shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Distributor, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Distributor will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Distributor, by calling Distributor's Customer Support Line at [Note: Distributor will need to provide Customer with an appropriate contact number for 24/7 support], of any problem or defect with the System and, at no charge, provide Distributor and/or Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Distributor and/or

Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Distributor and/or Accuray service engineers are required to remain on site, Distributor may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Distributor will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Distributor shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Distributor support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime* [*Note: Distributor must provide an Uptime guarantee equal or greater to the one set forth below, as set forth in Distributor's service agreement with Accuray.*]

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Distributor service engineer to work on it ("Downtime").

7.2. *Guarantee*. Distributor will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation*. Downtime will be calculated from the time a down System call is received by Distributor to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Distributor's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Distributor, will be calculated as Uptime.

7.4. *Reports*. Customer is responsible for recording and reporting Downtime to Distributor. Reports for the previous month's Downtime shall be provided to Distributor on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee*. For each year of the term of this Agreement, if Distributor achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Distributor shall make a commercially reasonable effort to supply at the time of need or stock with Distributor's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Distributor to perform the required repairs and return the System to good working order. Distributor shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's or Distributor's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Distributor and will be disposed of by Distributor Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Distributor under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray or Distributor including any move of the System from its installation site (other than by or at the express written direction of Accuray or Distributor).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Distributor.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray or Distributor, such action or adjustment shall not reduce Distributor's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Distributor's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Distributor for the then current Agreement year. In addition, Distributor shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL DISTRIBUTOR BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED DISTRIBUTOR WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Assignment*. Neither party may assign this Agreement without the other party's prior written consent, except that Distributor may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Distributor's assets or the sale of that portion of Distributor's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

14. *Disputes and Governing Laws*

14.1. In the event that a dispute arises between Distributor and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Distributor and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Distributor and Customer shall be resolved in a court of competent jurisdiction in the [Note: Please fill in an appropriate venue], and in no other place, provided that, in Distributor's sole discretion, such action may be heard in some other place designated by Distributor (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No

action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Distributor:	**To Customer:**
Attention:	Attention:
with cc to:	

16. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Distributor, a duly authorized representative must be any of the following: [Enter title of person with authority to bind Distributor].

20. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

21. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

CYBERKNIFE® INTERNATIONAL EXTENDED PARTS WARRANTY AGREEMENT

Note: Pursuant to the terms of Distributor's Warranty Agreement with Accuray, you must provide warranty service equal to or greater than the following terms.

1. *Scope of Warranty*. This is a Warranty Agreement by and between Accuray Incorporated's ("Accuray") authorized Distributor, ("Distributor"), located at , and ("Customer"), for Distributor to provide replacement of all defective parts when requested by Customer to maintain the CyberKnife System installed at site at ("System") so that it performs substantially in accordance with the specifications defined for the System revision as installed and/or updated under this Warranty Agreement, or upgraded under a separate agreement with Customer.

2. *Warranty Period*. This Warranty Agreement shall be for an initial period of one (1) year, beginning one (1) year after the date of demonstration of System acceptance testing to Customer ("Effective Date"), with an optional second year. The Agreement price shall be [Distributor to Insert Price] paid in advance. Customer may elect to receive an additional optional second year at the price of [Distributor to Insert Price]. Customer may exercise the option for optional second year by letter sent to Distributor, in accordance with the Notice provision set forth below, at any time up to twenty (20) days before the optional second year commences. If Customer exercises the option, Distributor is obligated to provide Extended Parts Warranty coverage on the same terms as the previous Agreement year. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

3. *Equipment to be Covered*. The Warranty Agreement is available only for equipment that was purchased directly from Distributor, installed by Accuray or Distributor, and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray or Distributor. This Warranty Agreement must immediately commence at the expiration of the factory warranty period.

4. *Replacement Parts*

4.1. Distributor shall make a commercially reasonable effort to supply at the time of need or stock with Distributor's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Distributor to perform the required repairs and return the System to good working order. Distributor shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

4.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's or Distributor's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Distributor and will be disposed of by Distributor Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

5. *Warranty Exclusions*. All warranty replacement of parts shall be limited to malfunctions which are due and traceable to defects in original material or workmanship of the parts. The warranties set forth in this Warranty Agreement shall be void and of no further effect in the event of abuse, accident, alteration, misuse or neglect of the System or its component parts, including but not limited to user modification of the operating environment specified by Accuray.

6. *Exceptions*

6.1. All obligations of Distributor under this Agreement shall be suspended and/or cease in the event of:

6.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

6.1.2. The intentional abuse of the System or negligence by Customer.

6.1.3. System hardware or software alterations not authorized by Accuray or Distributor including any move of the System from its installation site (other than by or at the express written direction of Accuray or Distributor).

6.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Distributor.

6.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

6.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray or Distributor, such action or adjustment shall not reduce Distributor's responsibility under this Agreement or liability for the performance of the System.

7. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 8 "Breach."

8. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

9. *Limitation of Liability and Warranty*

9.1. *Limitation of Liability*. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Distributor's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Distributor for the then current Agreement year. In addition, Distributor shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL DISTRIBUTOR BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

9.2. *Warranty*. Distributor warrants that, for the Term of this Warranty Agreement, the Products will be free from defects and perform substantially in accordance with the written specifications provided by Distributor as reflected in the Regulatory clearance at the time of sale. Except as set forth in the preceding sentence, Distributor makes no warranties or representations to Customer or to any other party regarding any products or services provided by Distributor. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DISTRIBUTOR DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

10. *Assignment*. Neither party may assign this Warranty Agreement without the other party's prior written consent, except that Distributor may assign this Warranty Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Distributor's assets or the sale of that portion of Distributor's business to which this Warranty Agreement relates. Subject to the foregoing, this Warranty Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

11. *Dispute Resolution*

11.1. *Informal Dispute Resolution*. In the event that a dispute arises between Distributor and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within thirty (30) days from the date of receipt of the claim document. The party filing the claim shall have an additional thirty (30) days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the Chief Executive Officer or the highest ranking officer of Distributor and the Chief Executive Officer or the highest ranking officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

11.2. *Jurisdiction and Venue*. All disputes under any contract concerning this Agreement not otherwise resolved between Distributor and Customer shall be resolved in a court of competent jurisdiction in the [Note: Please fill in an appropriate venue], and in no other place, provided that, in Distributor's sole discretion, such action may be heard in some other place designated by Distributor (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

12. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after

deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Distributor:	**To Customer:**
Attention:	Attention:
with cc to:	Accuray Incorporated Attention: Chief Financial Officer & General Counsel 1310 Chesapeake Terrace Sunnyvale, CA 94089 USA

13. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

14. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

15. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

16. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Distributor, a duly authorized representative must be any of the following: [Enter title of person with authority to bind Distributor].

17. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

18. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

SIGNATURE PAGE TO INTERNATIONAL EXTENDED PARTS WARRANTY

ACCURAY CYBERKNIFE® ADDITIONAL DIAMOND UPGRADE AGREEMENT

Note: Pursuant to the terms of Distributor's Additional Upgrade & Service Agreements with Accuray, you must provide service equal to or greater than the following terms.

1. *Scope of Agreement*. This CyberKnife Additional Upgrade Agreement ("Agreement") is made effective as of , 2006 ("Effective Date"), by and between Accuray Incorporated's ("Accuray") authorized Distributor, ("Distributor"), located at , and ("Customer"), for Distributor to provide Upgrades/Enhancements, when and if available, to the CyberKnife System installed at Customer's site at ("System").

1.1. *Definitions*:

1.1.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.1.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.1.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.1.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.1.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Upgrades/Enhancements that have a higher list price may be offered as more than a single Upgrade/Enhancement to Customers under this Agreement. If Upgrades/Enhancements that have a higher list price are offered as more than a single Upgrade/Enhancement then they will be offered as such to all customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.1.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Term & Payment Terms*

2.1. Customer has option of selecting either a one (1) year, two (2) Upgrade/Enhancement or two (2) year, four (4) Upgrade/Enhancement Agreement plan, as set forth below. Customer shall indicate its preferred option by checking one of the boxes below, if no selection is made Customer will signed up for a one (1) year agreement. Customer may only select an Agreement Term commensurate with the remaining term of the initial four (4) year Diamond term. For example, if Customer has three (3) years remaining of the initial four (4) year Diamond term, then Customer may only sign up for a three (3) year Agreement Term or less and the four (4) year Agreement Term would not be available.

- o Option #1—One (1) Year Agreement

  If Customer elects this Option #1, the Agreement Term shall be one (1) year, during which time Customer may receive up to two (2) Upgrades/Enhancements. The Agreement Price for this Option #1 is [Distributor to Insert Price]

- o Option #2—Two (2) Year Agreement

  If Customer elects this Option #2, the Agreement Term shall be two (2) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of four (4) Upgrades/Enhancements. The Agreement Price for this Option #2 is [Distributor to Insert Price] per year, or [Distributor to Insert Price] total.

- o Option #3—Three (3) Year Agreement

  If Customer elects this Option #3, the Agreement Term shall be three (3) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of six (6) Upgrades/Enhancements. The Agreement Price for this Option #3 is [Distributor to Insert Price] per year, or [Distributor to Insert Price] total.

- o Option #4—Four (4) Year Agreement

  If Customer elects this Option #4, the Agreement Term shall be four (4) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of eight (8) Upgrades/Enhancements. The Agreement Price for this Option #4 is [Distributor to Insert Price] per year, or [Distributor to Insert Price] total.

2.2. Customer shall pay Distributor in advance of or on the Effective Date for the first year of this Agreement. For any subsequent years, the annual payment shall be due on or before the anniversary of the Effective Date. For example, payment for the second year of the agreement would be due on the first anniversary of the Effective Date.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Distributor, installed by Accuray or Distributor engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray or Distributor. This Agreement is only available in conjunction with the [DATE] Diamond Elite Service Agreement signed by the parties and currently in effect ("Diamond Agreement"), and provided that Customer is current with all payments due under the Diamond Agreement and has used all upgrades allowed under the initial four (4) year term of the Diamond Agreement.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available, up to the number of Upgrades/Enhancements elected in Section 2.1 above, up to two (2) Upgrades/Enhancements per year per year during the Term. Customer acknowledges and

agrees that this in no way obligates Distributor to provide a minimum number of Upgrades/Enhancements, and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Distributor will offer multiple Upgrades/Enhancements and Customer may select up to the contracted-for number of such Upgrades/Enhancements. If Customer selects an option other than the one (1) year Agreement in Option #1 above, Customer may receive more than two (2) Upgrades/Enhancements during the first year of the Agreement Term, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in the subsequent year(s) of the Agreement Term. For example, if Customer orders a third Upgrade/Enhancement during the first year of the Agreement Term, Customer will have the opportunity for up to one (1) Upgrade/Enhancement when and if it becomes available during the second year of the Agreement Term. Upgrades/Enhancements may be software, hardware, or a combination thereof.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which of the available Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which Upgrade(s)/Enhancement(s) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Distributor to offer that particular Upgrade/Enhancement under this Agreement would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Distributor will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Distributor receives the signed order from Customer during either the Agreement Term.

3.4. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Distributor will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Distributor Service will be responsible for scheduling installations. Distributor will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance*

4.1. This Agreement does not include any software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. Such Updates and Bug Fixes are the subject of the Diamond Agreement.

4.2. Any Upgrades/Enhancements delivered pursuant to the terms of this Agreement will be considered part of Customer's System and will be serviced in accordance with the Diamond Agreement.

5. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 6 (Breach).

6. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to: failure to make payment due under this Agreement; failure to provide access as required to install any Upgrades/Enhancements contemplated by this Agreement; cancellation, termination, suspension or breach of the Diamond Agreement; or the filing of notice under bankruptcy or equivalent laws. If the

breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

7. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Distributor:

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

with cc to: General Counsel

To Customer:

8. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: [Enter title of person with authority to bind Distributor].

9. *Diamond Agreement*. The following terms and conditions of the Diamond Agreement shall apply to this Agreement, however, in the event of a conflict between the terms of the Diamond Agreement and this Agreement, the terms and conditions of this Agreement shall take precedence.

9.1. *System Quality Assurance Testing;*

9.2. *Service Coverage Period;*

9.3. *Limitation of Liability and Warranty;*

9.4. *Assignment;*

9.5. *Disputes and Governing Laws;*

9.6. *Waiver;*

9.7. *Severability;*

9.8. *Force Majeure; and*

9.9. *Amendments.*

10. *Entire Agreement*. This Agreement and the Diamond Agreement jointly contain the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

11. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DISTRIBUTOR	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED AN UPGRADE/ENHANCEMENT OPTION IN ACCORDANCE WITH SECTION 2.1, ABOVE.

EXHIBIT E NOTE: CHECK CORRECT PAGE NUMBER.

DISPUTE RESOLUTION

1. **Negotiation.** The parties shall attempt to resolve any dispute arising out of relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy, as set forth in **Section 6** of the Agreement.

2. **Mediation.** If the parties do not resolve the dispute within forty-five (45) days of undertaking negotiation thereof, either Party may refer the Dispute for mediation by the applicable mediation body (as provided below) or its successor (the "***Mediation Organization***") by providing the Mediation Organization and the other Party a written request for mediation, setting forth the details of the dispute and the relief requested. Each Party must then participate in the mediation in good faith and share equally in its costs. If a request for mediation is made, then the mediation shall take place in Santa Clara County, California. Mediation shall be conducted by JAMS or its successor, in accordance with the JAMS mediation rules and procedures then in effect. Any mediation taking place between the parties will be conducted by: (i) a mediator agreed to by the parties selected from the applicable Mediation Organization's panel of neutrals; or (ii) if the parties do not agree on a mediator, a mediator nominated by the applicable Mediation Organization. Any mediation taking place between the parties shall be conducted in the English language. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any Mediation Organization employees, are confidential, privileged and inadmissible for any purpose, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

3. **Arbitration.** If the dispute has not been resolved by non-binding means as provided herein within ninety (90) days of the initiation of such procedure, either party may initiate arbitration with respect to such matters at any time following the period provided for mediation, or determination by the mediator that the parties will not be able to resolve the issue through mediation, by filing a written request for arbitration to JAMS, as provided below, in accordance with JAMS arbitration procedures. If a request for arbitration is made, then the arbitration shall take place in Santa Clara County, California. Any arbitration taking place shall be conducted by JAMS or its successor, in accordance with the JAMS arbitration rules and procedures then in effect. Any arbitration taking place between the parties shall be conducted in the English language.

4. **Other Remedies.** Notwithstanding the foregoing, each Party shall have right before or during negotiation, mediation or arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the negotiations, mediation or arbitration.

EXHIBIT F

PARTS LIST AND PRICES

The following is a list of spare parts required for most likely service needs. There are three (3) "Kit" options, with an approximate costs of U.S. $TBD, $TBD and $TBD per kit. Additional parts may be needed for multiple units. Accuray will also maintain a central inventory in the region to supplement the Distributor's in-country spare parts kit. Additional parts may be purchase separately from the identified Spare Parts Kits, and prices for such will be quoted by Accuray on receipt of a request from Distributor.

Please note that the content of the following Spare Parts Kit Options are subject to change, though the prices of such Kits is subject to Section 2.4 (Product and Service Pricing).

PART DESCRIPTION	PART NO.	DISTRIBUTOR SPARE PARTS KIT A	DISTRIBUTOR SPARE PARTS KIT B	DISTRIBUTOR SPARE PARTS KIT C
X-Ray Head				
AFC Control PCA	01-3771-01	1	1	1
Phase Control PCA	01-4304-01	1	1	1
Phase Detector PCA	01-6164-01	1	1	1
AFC Power Supply Assy	01-4213-01		1	1
AFC Tuner Pot—New	021787	2	2	3
O'Ring Wave Guide	1200-00001			10
Laser	1000-00200	1	1	1
Laser Power Supply	4050-00001	1	2	3
Capacitor, 2500pf	1500-00020	3	3	6
Collimator Pot Assembly	01-7239-01	2	2	4
Assy Collimator Rot Lock	020183			3
Pulse Transformer Assy	01-7310-01	1	1	1
Despiking Resistor 2.0 kohm 50w	4700-00035	—	4	4
Bypass Cap 0.47 uF 600v-OBS-use 2 × 021444	1500-00064	—	2	2
0.1uF 1000V Capacitor	021444	—	2	2
Magnetron-Refurbished	018575			1
Mag//Pulse Xfmer Conn Assy	01-4651-01			1
Semi Ridgid Coax Assy	01-6268-01		1	1
Semi Ridgid Coax Assy	01-6269-01		1	1
Flex Waveguide	1000-00055		1	1
Dummy Load (Plastic)	021145			1
Hybrid Coupler	3450-00003			1
Ion Chamber	01-7130-01		1	1
Laser Mirror	1000-00210	2	2	2
Crystal Diode, Neg	2300-00003		1	1
Crystal Diode, Pos	2300-00004		1	1
Fuse .5A SloBlo	4300-00004			10
Fuse .2A SloBlo	4300-00014			5
Fuse 1.5A SloBlo	4300-00026			5
Bridge Rectifier 200V 40A	4750-00007	2	2	2
Diode, Gen Purpose 1A	4800-00026	6	6	6

PART DESCRIPTION	PART NO.	DISTRIBUTOR SPARE PARTS KIT A	DISTRIBUTOR SPARE PARTS KIT B	DISTRIBUTOR SPARE PARTS KIT C
Modulator				
Thyratron DeQuing	5700-00001	1	1	1
Thyratron Deuterium (Main)	5700-00002	1	1	1
High Voltage wire 14g	6000-00080	5	5	5
HV Putty	1600-00170	1	1	1
Diode 7.5	4800-00024	3	3	3
Diode 10	4800-00022	3	3	3
Diode 15	4800-00021	3	3	3
Cap, PFN, .011uF 25KV	1500-00002	3	3	3
Relay 3 pdt 120 vac	4500-00002	1	2	3
Relay 4pdt	4500-00001	1	1	1
Relay 3 pdt 120 vac	4500-00003	1	1	1
Relay 3pdt 6vdc	4500-00005	1	1	1
Relay, Time Delay	4500-00009		1	1
XSFMR AUTO VAR W/DIAL&KNOB	5600-00007	—	1	1
Dequing Trigger Transformer	01-2699-01	1	1	1
Steering PS	4000-00020			1
Thyratron Driver PCA	01-1141-02	1	1	1
Ion Pump Monitor PCA	01-1617-01	1	1	1
High Voltage Divider PCA	01-3430-01			1
Dequing Trigger Generator PCA	01-3193-01	1	1	1
Thyratron Bias & Trigger PCA	01-3310-01	—	1	1
HV Rect 800V 8A	4750-00004	1	1	1
HV Rect 600V 8A	4750-00002	1	1	1
Lamp 28v,t1$^{3}/_{4}$	2450-00032			2
Modulator Control Chassis				
Fault Logic	01-3906-01	1	1	1
Trigger Generator	01-1433-01	1	1	1
Mag/Accel Htr Cont	01-3126-01	1	1	1
Fault Indicator	01-6895-01	1	1	1
Control Logic	01-4344-01	1	1	1
MCC/IFCC Interface	013509	1	1	1
Fan Water Interlock	020425	1	1	1
Fault Logic A3	01-3906-02	1	1	1
Counter Interface PCA	01-4363-01	1	1	1
Display Counter LCD	2950-00005			1
Fuse 2A SloBlo	4300-00002			5
PS +/-24V	4000-00002		1	1
Extender Card	1700-00002		1	1

PART DESCRIPTION	PART NO.	DISTRIBUTOR SPARE PARTS KIT A	DISTRIBUTOR SPARE PARTS KIT B	DISTRIBUTOR SPARE PARTS KIT C
Gun Box				
Grid Drive PCA	01-5924-01	1	1	1
Grid Pulse Amp PCA	01-7131-01	1	1	1
Gun Curr. Sample & Hold PCA	01-6170-01	1	1	1
Gun Heater Xfmr	01-1875-01	1	1	1
Grid Pulse Xfmr	01-5074-01	1	1	1
Grid Bias PS	01-5073-01	1	1	1
Grid Bias PS PCA	01-5075-01	1	1	1
Grid Trigger Network PCA	01-6160-01	1	1	1
PWR SPLY 0-20 KV,0-1mA	4000-00003			1
Gun Filament PCA	01-4131-01	1	1	1
Grid Amp PCA	01-6168-01	1	1	1
Gun Interlock PCA	01-5958-01	1	1	1
Fuse 3A SloBlo	4300-00003			5
Rectifier Bridge 800v	4750-00008	1	1	1
Transorb 325v 6500a	014949	1	1	1
Cap, Elect 30uF 450V	1500-00112	2	2	2
Cap, Cer 0.47uF 600V	1500-00064	2	2	2
Dose Box				
Dose Count PCB	01-3910-01	1	1	1
P.S. Monitor PCA	01-7143-01	1	1	1
Dose Bias PS Assy	01-5767-01	1	1	1
Fuse 1A SloBlo	4300-00015			10
Magnetron Box				
Mag Fil Curr Mon PCA	01-4199-01	1	1	1
Mag Htr Xfmr 10V 20A	01-1849-01	1	1	1
Junction Box				
Water Flow Switch (display type)	5100-00020	1	1	1
SF6 Fitting	1000-00130	1	1	2
IFCC				
Dose Stif Board	010615	1	1	1
Transition Module	010817			1
Heat Exchanger				
Filter-Affinity 5"	019405	5	5	5
Screen Strainer	019406	5	5	5

PART DESCRIPTION	PART NO.	DISTRIBUTOR SPARE PARTS KIT A	DISTRIBUTOR SPARE PARTS KIT B	DISTRIBUTOR SPARE PARTS KIT C
TLS				
Power Supply 20c Detector	016940	1	1	2
Frame Grabber PCA—Squirel	019324	1	1	2
Silicon Grease	021734			2
Wavy Washers	021330	4	4	12
Rubber Washers	021735	4	4	12
IsoPost Assembly	018901			1
Isopost PCA	013418			1
TLS PC	020083			1
Video Card	019419	—	1	1
TLSCC	018283			1
X-ray Source Assy-60'cable	021242		1	1
HT Tank	016667	—	1	1
Generator Console	016669		1	1
HT Controller Board	020547			1
LF-RAC PCA	020548			1
Couch				
Electronics Tray	021923			1
Axum Pendant	020656	1	1	2
Pendant—non AXUM	020501	1		
AXUM Display	020657		1	1
Pendant Holder	020957			1
Encoder 40"	021924	1	1	1
Limit Switch	021927	1	1	1
Serial Connection Board	021921	—	1	1
Robot				
Kuka Cable Support (Tennis Raquet)	021127			1
KUKA PC	021215			1
KUKA PC CDROM	021732			1
KUKA PC HDD	021733	1	1	1
RDW Board	021729		1	1
DSE Board	021730		1	1
MFC2 Board	021731		1	1
Battery	021619	2	2	4
Fuse Kit	021620			2
SGI				
Tape Drive 4mm 20GB	017681	1	1	1
Hard Drive 73GB	020534		1	1
Front Panel LED	021737	1	1	1

PART DESCRIPTION	PART NO.	DISTRIBUTOR SPARE PARTS KIT A	DISTRIBUTOR SPARE PARTS KIT B	DISTRIBUTOR SPARE PARTS KIT C
ESCC				
ESCC Assy—AXUM	020575			1
Fuse 1A 3AG Fast Acting	014125			10
Fuse .25A 3AG Fast Acting	014124			10
Main Board PCA—AXUM	020477	1	1	1
ESCC/ISCC Interface	013510	1	1	1
Adapter Board	016122	1	1	1
Power Supply	018361			1
Synchrony				
Break out Box	020885			1
Synchrony PC	020082			1
Power Distribution Unit (PDU)				
LED Bulb, 120V, Amber	013580			5
Bulb, 60V, Incand, Clr	018540			5
Operator Console				
Operator Console	019183			1
Bulb, 24V, Incand, Clr t3 1/4	013590			10
LED Bulb, 24V, White	019196			2
Cables				
Gun HV Cable Assy	018370	1	1	1
Dose Cable	020015	1	1	1
CyRIS				
	TBD			
Miscellaneous				
Contact Block 2NO	013585		2	2
Keyswitch	010862		1	1
Pushbutton	013571		1	1
	Total Kit Prices:	**TBD**	**TBD**	**TBD**

QuickLinks

Exhibit 10.29

ACCURAY INCORPORATED
INTERNATIONAL SALES AGENT AGREEMENT

This International Sales Agent Agreement ("Agreement") is entered into by and between ACCURAY INCORPORATED, a California corporation with its executive offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089, USA ("Accuray"), and , a corporation organized under the laws of , with its executive offices located at ("Agent"), as of , 2006 ("Effective Date").

Accuray manufactures and sells full-body radiosurgery systems using image-guided robotics, including the CyberKnife, which is FDA cleared in the United States 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 order to achieve its business objectives, Accuray relies on qualified distributors and sales agents to market and/or distribute its products and services in different territories.

Accuray wishes to appoint Agent as its exclusive sales agent in the Territory, as defined below, subject to the terms and conditions of this Agreement and Agent wishes to accept such appointment.

1. Definitions

1.1. **Accuray's Terms of Sale** means the current standard international transaction terms and conditions of sale prepared by Accuray from time to time and provided to Agent.

1.2. **Customer** means any person or business entity lawfully doing business in the Territory with whom Agent enters into negotiations, and/or Accuray enters into an agreement for an agreement for Products or Services. Customer does not include sites or hospitals located on United States armed forces bases in the Territory.

1.3. **Product(s)** means the CyberKnife System and/or related products manufactured by or for Accuray for use in the radiosurgery market and listed in Exhibit A attached to this Agreement, which have been approved for sale in the Territory.

1.4. **Project** means any activity or situation that includes a potential Customer or prospect that might be interested in acquiring Accuray's Products or Services.

1.5. **Proposal** means a document that offers to provide Products or Services to a prospective Customer.

1.6. **Purchase Contract** means a document provided by Accuray for the Customer in response to the Purchase Request received from Agent, that sets forth the Products or Services and the specific terms and conditions of the transaction desired by the Customer.

1.7. **Purchase Request** means a document provided by Agent to Accuray that sets forth in adequate detail, including specifications and delivery schedule, the Products or Services desired by the Customer.

1.8. **Service(s)** means the performance of radiosurgery-related service(s) by Accuray, which may include technical support, training or installation of Products, as listed in Exhibit A.

1.9. **Service Agreements** means the Accuray Diamond Elite Service Agreement, Ruby Elite Service Agreement, Emerald Elite Service Agreement and Extended Parts Warranty, Additional

Upgrade Agreement or such other service programs and agreements as may be released or modified by Accuray from time to time.

1.10. **Specification(s)** means the current written description of a Product or Service prepared by Accuray and provided to Agent.

1.11. **System(s)** means the Accuray CyberKnife® Robotic Radiosurgery System as set forth in Exhibit A attached hereto.

1.12. **Territory** means _____.

2. Duties of Accuray

2.1. **Status.** Accuray is responsible for ensuring that the Products supplied are of good quality as further described below.

2.2. **Exclusive Agent.** Accuray hereby appoints Agent as the exclusive sales agent of Products and Services to Customers in the Territory, subject to the terms and conditions of this Agreement. So long as Agent achieves the volume of business set forth below and otherwise meets its obligations under this Agreement, Agent shall be the exclusive sales agent of Products and Services to Customers in the Territory.

2.3. **Products and Services.** Upon receipt of a Purchase Request, Accuray will use commercially reasonable efforts to provide to Agent in a timely manner a Purchase Contract for those Products and Services in accordance with the terms of this Agreement.

2.4. **Product and Service Pricing.** Accuray will provide Product and Service pricing to Agent from time to time during the Term of this Agreement. Products and Services shall be priced by Accuray to Agent in accordance with Accuray's price list in effect from time to time, but, in any case, no change can be made without six (6) months' prior written notice to Agent. The current prices, as of the Effective Date, of Accuray's Products and Services are listed on Exhibit A. All prices will be stated in US Dollars, unless another currency is agreed upon in writing by Accuray. Accuray has provided Agent with Accuray's list price as well as a Minimum Sales Agent Price. In no event shall Agent sell a CyberKnife System, or other Accuray Product or Service at less than the Minimum Sales Agent Price.

2.5. **Product Specifications and Promotional Literature.** Accuray will provide product specifications and promotional literature to Agent from time to time during the Term of this Agreement. Agent may use product specifications and promotional literature in Agent's dealings with Customers. Accuray may introduce changes and upgrades to the Products. Accuray will be responsible for ensuring that any changes or upgrades to the Products comply with the latest regulatory approvals, and will use commercially reasonable efforts to give Agent as much advance notice of upgrades as is feasible.

2.6. **Regulatory Clearance.** Agent is responsible for helping Accuray to obtain the regulatory clearance in the Territory for Products in Accuray's name, as detailed in Section 3.4, however Accuray will provide Agent with reasonable assistance in obtaining regulatory clearances.

2.7. **Warranty.** Accuray will provide a warranty that the Products will be free from defects and perform substantially in accordance with the written Specifications provided by Accuray as reflected in the regulatory clearance at the time of sale for a period of one (1) year following installation of the Products at Customer's facility, but not to exceed eighteen (18) months following shipment of such Products to Customer. Accuray makes no warranty that the operation of any software will be uninterrupted or error-free. Except as set forth in the preceding sentences, Accuray makes no warranties or representations to Customer or to any other party regarding any Products or Services provided by Accuray.**TO THE FULLEST EXTENT**

PERMITTED BY APPLICABLE LAW, ACCURAY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

2.8. **Support.** Accuray will provide Customers the following types of support:

2.8.1. **Hardware.** During the warranty period, Accuray will provide replacement of defective parts. Agent shall be responsible for and/or assist Accuray with the installation and labor for such replacement parts.

2.8.2. **Software.** During the warranty period, Accuray will provide error corrections or "bug fixes." Additionally, Accuray shall provide Customer with any and all applicable error corrections and bug fixes generally provided by Accuray to Accuray customers with similar Product installations. Agent shall be responsible for and/or assist Accuray with the installation of such bug fixes.

2.8.3. **Warranty Exclusions.** All warranty replacement of parts shall be limited to malfunctions which are due and traceable to defects in original material or workmanship of Products. The warranties set forth in this Section 2 shall be void and of no further effect in the event of abuse, accident, alteration, misuse or neglect of Products, including but not limited to user modification of the operating environment specified by Accuray and user modification of any software.

2.8.4. **Service Agreements.** The Service Agreements will be provided at the time of purchase or after the one-year warranty period, as appropriate. A summary of the service terms and sample Service Agreements attached hereto as Exhibit E. The Service Agreements are to be ordered on the terms as set forth in the agreements, unless otherwise agreed to in writing by an authorized representative of Accuray.

2.8.4.1. **Accuray Direct Sales.** Accuray reserves the right to sell the Service Agreements directly to customers within the Territory. Accuray's prices for such direct Service Agreements are set forth in Exhibit E, and Accuray will not offer any Service Agreements to customers in the Territory at lesser prices without six (6) months prior written notice in accordance with Section 2.4 (Product and Service Pricing) above.

2.8.5. **Additional Support.** Accuray will provide additional installation, warranty or service support at Distributor's request, to be ordered separately, and priced according to Accuray's then-current price lists.

2.9. **Training.** Accuray will provide training to Agent and Customers in accordance with Exhibit D.

2.10. **Compliance with Laws.** Accuray will be responsible for complying with U.S. laws, and, as notified by Agent, with Territory laws as they pertain to the Product and the regulatory clearance, and safety in accordance with Accuray's written Product specifications for intended use. Upon notification by Agent of any impending changes to Territory laws or regulatory requirements that may necessitate modifications in the Products or Services, Accuray shall respond to such notifications in a timely manner and make necessary efforts to ensure continued compliance.

3. Duties of Agent

3.1. **Status.** Agent shall be and must at all times make it clear that it is an independent entity contracting with Accuray, and is not the employee Accuray. Agent does not have the ability or authority to enter into any legal agreements or obligations that would bind Accuray in any

manner. Agent represents that it is involved in other businesses, not competitive with its activities under this Agreement but of sufficient volume and profitability that Agent is in no way dependent upon this Agreement or its relationship with Accuray for its continuing viability or success. Agent will inform Accuray of any business that it is pursuing and is potentially competitive (in the same treatment area, using vaults, using the same sales and marketing personnel) and will obtain prior written approval from Accuray prior to entering into such business.

3.2. **Training.** Agent will support Accuray's training of new Customer personnel, and will help arrange training at Accuray for Customers, according to Exhibit D.

3.3. **Market Knowledge, Promotion and Sales.** Agent represents that it has a thorough knowledge of the Territory, the market for radiosurgery products and of all current and proposed Projects. Agent will develop a thorough and complete understanding of the Products and Services. Agent will use its knowledge and understanding to develop potential Projects.

3.3.1. Agent will use best efforts to promote the sale of and to sell Products and Services to Customers in accordance with Accuray's marketing guidance and policies in effect from time to time and will make best efforts to learn of any potential Project. Agent will make itself familiar with each such Project so as to learn all conditions of the Project which may impact the Products or Services to be offered. In addition, as Accuray releases new features and Products, Agent will use best efforts to promote the sale of and to sell those features and Products to the installed base of Products and to new Customers in the Territory.

3.3.2. Agent sales and marketing staff will actively participate in the following yearly activities: American Society of Therapeutic Radiology & Oncology (ASTRO); American Association of Neurological Surgeons (AANS); European Society of Therapeutic Radiology and Oncology (ESTRO) (if applicable); Accuray worldwide users' meeting; and Accuray worldwide sales meetings. Active participation includes attendance at and participation in such meetings.

3.3.3. Agent will report to Accuray any proposed or pending Projects outside the Territory about which Agent learns during the Term of this Agreement.

3.4. **Regulatory Clearance.** Agent will be responsible for helping Accuray to obtain the regulatory clearance in the Territory for Products and for any changes or upgrades to the Products. Agent will be responsible for (i) managing any paperwork associated with obtaining the regulatory clearance; (ii) timely application for all upgrades that Accuray determines are commercially appropriate; and (iii) maintaining the regulatory clearance. Accuray shall reimburse Agent for any direct costs or charges billed by third parties, plus any other direct regulatory clearance-related expenses incurred in connection with such activities, as long as those costs have been pre-approved in writing by an authorized representative of Accuray. At Accuray's request, Agent will provide Accuray with receipts and other documentation for all such expenses. Accuray shall not be responsible for Agent's internal administrative personnel or resources for such activities.

3.5. **Import License.** Agent will help Accuray to obtain and maintain any required import licenses.

3.6. **Agent Personnel.**

3.6.1. **Full-Time Personnel.** Agent will provide full-time personnel that will include (to be determined) a general manager, a senior product manager and support staff, at least one (1) senior sales person with sufficient skill, training and experience to be effectively

capable of selling a $4 million medical product, and one (1) clinical support or training specialist. Agent will provide adequate technical support staff for the operation and maintenance of the Products and Services. Agent will employ one (1) service engineer who is capable of performing installation and First Line Field Service (as defined in Section 3.20 (First Line Field Service) below). All of these personnel must be hired and attend training at Accuray within nine (9) months of the Effective Date of this Agreement. Accuray will provide the training and Agent will pay for travel and accommodation expenses. These personnel will be full-time, and will have sufficient understanding of the business relating to Accuray's Products and Services and will have adequate backgrounds in surgical and/or radiation oncology products and services, knowledge, skill, experience and training to perform the following functions:

3.6.1.1. Sales, sales management, sales forecasting, and order management;

3.6.1.2. Marketing throughout the Territory;

3.6.1.3. Planning for the installation and installing Products;

3.6.1.4. Clinical trials, regulatory compliance, and reimbursement;

3.6.1.5. Product management;

3.6.1.6. Development of on-site training.

3.6.1.7. Provision of Services; and

3.6.1.8. First Line Field service.

3.7. **Proposals.** Agent will submit a timely Proposal on every Project in the Territory during the Term of this Agreement. All Proposals shall be prepared and submitted to the Customer by Agent. Proposals will offer only Products or Services described in then current written Specifications, and only in accordance with this Agreement. Unless Agent has prior written consent from Accuray to the contrary, all Proposals submitted by Agent are (and Agent must inform the Customer that they are) subject to change in the event Accuray's Terms of Sale or Specifications change prior to the time Accuray accepts a signed Purchase Contract from the Customer (if it does).

3.8. **Requests.**

3.8.1. Agent will receive each request placed by a Customer to which Agent has submitted a Proposal and send an appropriate Purchase Request to Accuray. Purchase Requests may be accepted only by Accuray.

3.8.2. Agent understands and acknowledges that shipment of any System or Product by Accuray must be to a medical facility within the Territory,

3.8.3. Agent shall facilitate the negotiations, including language support, between Accuray and a Customer following submission of a Purchase Request to Accuray.

3.8.4. The resulting Purchase Contract for the sale of Products and Services shall be between Accuray and the Customer. In the case of a Product Request, Agent must send a Purchase Request to Accuray at least six (6) months prior to the expected shipment date. All Products must be purchased from Accuray unless otherwise specified in this Agreement or agreed in writing by Accuray.

3.9. **Payment.** Payment for Products shall be made by Customer to Accuray in US Dollars in the form of either (1) an irrevocable trade finance letter of credit or (2) wire transfer as further described in Sections 3.9.1 and 3.9.2, respectively below. Accuray shall bear the cost of any

bank charges assessed by its bank for a letter of credit and any commission charge for a wire transfer. Customer will pay a late charge of two percent (2%) on any balance that becomes overdue, plus interest at the rate of one percent (1%) per month or the highest interest rate allowed by law, whichever is greater, until paid in full.

3.9.1. **Letter of Credit.** An irrevocable trade finance letter of credit issued by Customer's bank, confirmed by a bank designated by Accuray that is doing business in the State of California, United States of America, in all respects, including the confirming bank, acceptable to Accuray, and delivered to Accuray with the signed Purchase Contract. The letter of credit will provide that Accuray can draw against the letter of credit according to the payment schedule set forth in the signed Purchase Contract. Accuray's standard payment schedule is as follows:

3.9.1.1. 30% of Price due with Signed Purchase Contract

3.9.1.2. 40% of Price due upon delivery of the CyberKnife G4 System

3.9.1.3. 30% of Price due upon Completion of Acceptance Testing

3.9.2. **Wire Transfer.** A wire transfer made in advance of the date payment is due, made in U.S. dollars, to a bank selected by Accuray, in accordance with the same payment schedule as outlined above with respect to the Letter of Credit.

3.10. **Agent's Commission.** Agent will receive payment from Accuray based on the money actually received from Accuray on all signed Purchase Contracts or other agreements accepted by Accuray ("Commission") as follows:

3.10.1. **CyberKnife System Purchase Contract.** For each signed Purchase Contract for a CyberKnife System received from a Customer within the Territory and accepted by Accuray, Agent shall receive Commission based on the purchase price for the System as set forth in Exhibit C. Agent shall receive its Commission for a CyberKnife System in accordance with the following schedule:

3.10.1.1 Ten percent (10%) of Agent's Commission upon Agent's Customer signing a Purchase Contract with Accuray and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above;

3.10.1.2 Sixty percent (60%) of Agent's Commission upon shipment and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above; and

3.10.1.3 Thirty percent (30%) of Agent's Commission upon installation with successful acceptance testing of the System and release of funds from the Letter of Credit in accordance with Section 3.9.1 above making funds available to Accuray or wire transfer in accordance with Section 3.9.2 above.

3.10.2. **Service Agreements.** For each signed Service Agreement, Agent will receive a Commission as set forth in the attached Exhibit C. Such Commission shall be paid as monies are received by Accuray, in accordance with the payment schedule selected by the Customer. In other words, if the Customer elects to make annual payments, Agent will receive its Commission when Accuray receives the Customer's annual payment. Alternatively, if the Customer elects to make quarterly payments, then Agent will receive a proportional share of its Commission when Accuray receives the Customer's quarterly payment.

3.10.3. **Additional Options.** For each signed Purchase Contract for Additional Options received from a Customer within the Territory and accepted by Accuray, Agent shall receive a Commission in an amount equal to 10% of the payments actually received by Accuray.

3.10.4. **Installation.** For each CyberKnife System installation on which Agent assists Accuray, which assistance shall include site planning and facilitation of installation with Customer, Agent shall receive a Commission of U.S. $12,500 upon completion of acceptance testing.

3.10.5. **Payment of Commission.** All Commissions shall be paid within thirty (30) days of receipt of payment by Accuray from Customer.

3.11. **Volume of Business.** Accuray and Agent have reviewed and discussed the Territory in detail and have agreed that Agent will market and sell the minimum volume of Systems as set forth in Exhibit B attached to this Agreement. If Agent does not make the minimum sales as set forth in Exhibit B Accuray may, at its sole determination and in its sole and complete discretion, elect to make this sales agent arrangement non-exclusive or terminate this Agreement.

3.12. **Forecast.** In order to support Accuray's production planning, at least every three (3) months during the Term of this Agreement, Agent will provide Accuray an eighteen (18) month rolling forecast of: (i) targeted Customers, (ii) contracted Customers, and (iii) forecast of Product sales by product line. The forecast will include an update on the top ten (10) projects. Such forecasts shall be provided to Accuray by the first business day of January, April, July and September each year, and shall be delivered to the Accuray General Manager for the Territory. Such forecasts are in addition to the reports to be provided in accordance with Section 3.22.1 (Reports) below.

3.13. **Customer Support.** Agent will provide guidance to billing and reimbursement personnel of each Customer regarding regulatory and billing requirements and reimbursement for treatment provided with Products under radiosurgery reimbursement codes applicable within the Territory. Agent will be responsible for ensuring that its personnel maintain their proficiency with respect to the Products and all upgrades, enhancements and new feature releases, and will send its personnel to Accuray for training as necessary.

3.14. **Customer Relations.** Agent shall market and sell Products and Services to Customers in the Territory, shall report promptly and in writing to Accuray any complaints or expressions of dissatisfaction by the Customer relating to the Products or Services. While Agent shall have no authority to offer on behalf of Accuray anything in settlement of any such complaints or expressions, Agent shall use all best efforts to satisfy the Customer that the Products and Services meet the applicable written Specifications, Proposal, and Order, if such is the case.

3.15. **Public Relations.** Agent will implement a public relations program once a CyberKnife is operational in the Territory.

3.16. **Installation.** Agent will help coordinate installation for any Product a Customer purchases, including assistance with site planning and facilitation between Accuray and Customer for site planning and installation work. Agent also agrees to be on site during the actual installation of the System at Customer's facility.

3.17. **Warranty.** Accuray will provide a one (1) year warranty (for parts and service) for each Product a Customer purchases. Agent will not make any other warranties or representations in Accuray's name or on Accuray's behalf.

3.18. **Service Agreements.** Agent will make commercially reasonable efforts to sell a Service Agreement to each Customer. Sample Service Agreements are summarized and attached in

Exhibit E attached hereto, however, Agent is to obtain the most recent version of the Service Agreements before engaging with to a Customer.

3.19. **Upgrades.** Any upgrades can be purchased at the discretion of the Customer.

3.20. **First Line Field Service.** Agent will provide to all Customers, remotely and on-site when needed, routine maintenance and service and timely response to special requests for service of all installed Products in the Territory. Additionally, if Accuray must be on site at a Customer facility to provide service, Agent will accompany any Accuray personnel to provide language support and to facilitate such repairs.

3.21. **Spare Parts Inventory.** Agent will maintain a spare parts inventory at its cost, as detailed under Exhibit G, to support Customers. Accuray currently offer three (3) different Agent Spare Parts Kits, and Agent may select which Spare Parts Kit it wishes to purchase, provided, however, that Agent will maintain at least a Kit A for so long as there are two (2) CyberKnife Systems installed in the Territory, and a Kit B for so long as there are three (3) or more CyberKnife Systems installed in the Territory. Agent is willing to ship spare parts to locations outside the Territory as requested by Accuray, and Accuray will reimburse Agent for the direct cost of such activity.

3.22. **Records and Reports.**

3.22.1. **Reports.** Within thirty (30) days after the end of each quarter, Agent will provide Accuray with a written report that includes: (i) Agent's sales of each Product for that quarter, by dollar volume and number of units, both in the aggregate and for such categories as Accuray may designate from time to time; (ii) CyberKnife utilization reports: and (iii) any other information requested by Accuray. Agent's report will comply in form and substance with Accuray's reporting requirements, as they are determined by Accuray and communicated to Agent in writing from time to time.

3.22.2. **Notification.** Agent will promptly notify Accuray in writing of any: (i) claim or proceeding involving the Products; or (ii) claimed or suspected Product defects.

3.22.3. **Records.** During the term of this Agreement and for a period of three (3) years after any termination or expiration thereof, Agent will maintain complete and accurate books, records and accounts relating to the distribution of the Products, and will permit Accuray's authorized representatives to examine them on reasonable prior notice.

3.23. **Compliance with Laws.**

3.23.1. **Within the Territory.** When Products are being shipped to Customer, unless the particular Purchase Contract provides otherwise, Agent shall be responsible for informing Accuray of all applicable import duties and other import, licensing and immigration formalities which must be complied with in order for the Products to be lawfully imported into the Territory or the Services to be lawfully performed in the Territory. In addition, Agent will assist Accuray in ensuring compliance with regulatory and all other laws and regulations in the Territory. Agent will notify Accuray of any impending changes to Territory laws or regulatory requirements that pertain to, and may necessitate modifications to, the Products or Services.

3.23.2. **United States laws.** Agent understands that, because it is marketing and selling the Products and Services of Accuray, a company subject to the laws of the United States of

America, Agent must, when carrying out its duties under this Agreement, avoid violations of certain of such laws. These include, but are not necessarily limited to, the following:

3.23.2.1 Restrictive Trade Practices or Boycotts, U.S. Code of Federal Regulations Title 15, Chapter VII, Part 760.

3.23.2.2 Foreign Corrupt Practices Act, U.S. Code Title 15, § 78.

3.23.2.3 Export Controls, imposed by U.S. Executive Order or implementing regulations of the U.S. Departments of Commerce, Defense or Treasury.

3.23.3. **No Illegal Activity.** Agent and its Sub-Agents shall not engage in any illegal activities. Accuray will not be held responsible for any activities of Agent or its Sub-Agent that may be considered to be illegal. For example, Accuray does not support the practice of bribes or under-the-table payments. Agent will ensure a like clause is included in each agreement it has with its Sub-Agents, and monitor activities of its Sub-Agents in the Territory closely. In the event, Accuray deems that the good-will of its Products has been significantly or may potentially be affected by any such illegal activity, then Accuray reserves the right to terminate this Agreement for material breach under Section 5.3 (Termination for Cause), with no further liability to Agent, or its Sub-Agent. Accuray assumes no liability for any such practices and Agent hereby indemnifies and holds Accuray, its officers and assigns, harmless from any and all such activities of Agent or its Sub-Agents.

3.24. **Translations.** To the extent it deems necessary, Accuray will translate or localize any product specifications, user manuals and promotional literature Accuray has provided to Agent. If Accuray performs such translation, Accuray may, at its sole option, charge Agent for the cost of translations. If Accuray does not elect to translate such materials, and Agent decides to do so on its own, Agent assumes all liability for as well as indemnifies and holds Accuray harmless from any and all issues and claims relating to such translations or localization. Accuray reserves the right to request review and modification of such translated materials.

3.25. **Insurance.** Agent shall obtain and keep in full force and effect during the Term of this Agreement (and thereafter until all Projects as to which Accuray has issued a Purchase Contract for Agent have been completed) all insurance required by and in compliance with local laws in the Territory, which shall be equivalent to general and products liability and workers' compensation insurance on an occurrence basis with coverage limits (i) in the normal and customary business of a medical device sales agent and (ii) sufficient to provide coverage of any claim which may reasonably arise out of the actions or inactions of that party related to this Agreement or the business relationship between the parties. Agent shall provide to Accuray from time to time while its obligation under this paragraph is in effect certificates evidencing such insurance, which certificates shall expressly provide that the underlying coverage cannot be cancelled without at least thirty (30) days' written notice to Accuray.

3.26. **Competing Products.** During the Term of this Agreement, Agent will not sell, offer for sale, promote the sale of, distribute or represent in any way products or services which are competitive with the Products or Services.

4. Compensation and Payment

4.1. **Compensation.** Except as otherwise provided herein, Agent's only compensation for its efforts on Accuray's behalf shall be the Commissions it earns on the sale of Products and Services, and Agent shall bear all of the expenses which it incurs in making those efforts.

4.2. **Payment.** Agent shall be responsible for determining the creditworthiness of its Customers prior to submitting a Purchase Request to Accuray and will assist Accuray in collecting any payments due to Accuray from its Customers.

5. Term and Termination

5.1. **Term.** The Term of this Agreement shall begin on the Effective Date and continue until _____, unless extended or sooner terminated in accordance with this Section 5.

5.2. **Renewal.** This Agreement will be renewed for additional period of ___ year(s), if Agent has carried out its duties under this Agreement, including meeting the minimum volume of sales set forth in Exhibit B, as updated in accordance with the following, and Accuray Sales & Marketing Department reasonably believes that the Agent is following Accuray's market strategies. Accuray and Agent will meet approximately one hundred eighty (180) days prior to the termination date and agree in writing upon a volume of business, a number of signed Purchase Contracts with Customers, and any other terms, for the subsequent renewal period. The volume of business and number of signed Purchase Contracts with Customers for each renewal period shall reflect an increase in units over the numbers determined for the previous period, unless Accuray reasonably determines at its sole discretion that market conditions would not so permit.

5.3. **Termination for Cause.** Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure it within forty-five (45) days after written notice of the breach is given by the non-breaching party, provided that, as to a breach which cannot be fully cured within forty-five (45) days, then the parties shall agree in writing on a resolution plan and a reasonable timeline for such cure period, and that breach shall be deemed timely cured if the cure is completed within the agreed upon timeline. The effective date of termination shall be the date of expiration of the cure period without a cure having occurred.

5.4. **Termination Without Cause.** Either party may terminate this Agreement with six (6) months prior written notice to the other party. Each party shall diligently pursue its obligations under this Agreement until the date of termination.

5.5. **Termination Upon Change in Control.** Accuray shall have the right to terminate this Agreement in the event of a Change in Control, acquisition by a third party or a global change in distributorship and sales structure upon six (6) months advance written notice to Agent. A global change in distribution and sales structure may be when Accuray, in its sole discretion and in its own best interests, determines the need to change the distribution and sales channels, structure, or arrangements on a global basis.

5.6. **Effect of Termination.** In the event of termination, the effect of such termination shall be as follows:

5.6.1. **Sales in Process.** This Section 5.6.1 shall only apply in cases of Termination Without Cause (Section 5.4) and Termination Upon Change in Control (Section 5.5).

5.6.1.1. Accuray will accept all Purchase Requests submitted by Agent within the three (3) months following the effective date of termination;

5.6.1.2. For Purchase Contracts accepted by Accuray and based on Purchase Requests submitted prior to the effective date of termination, Agent shall receive its full Commission;

5.6.1.3. For Purchase Contracts accepted by Accuray and based on Purchase Requests submitted during the three (3) month period following the effective date of

termination, Agent shall receive its Commission, paid in accordance with Sections 3.9 (Payment) and 3.10 (Commission) above, on a pro-rated basis as follows:

5.6.1.3.1. For Purchase Contracts signed by the Customer and accepted by Accuray within three (3) months following the effective date of termination, Agent shall receive 80% of its Commission, paid in accordance with Sections 3.9 (Payment) and 3.10 (Commission) above;

5.6.1.3.2. For Purchase Contracts signed by the Customer and accepted by Accuray within six (6) months following the effective date of termination, Agent shall receive 60% of its Commission, paid in accordance with Sections 3.9 (Payment) and 3.10 (Commission) above; and

5.6.1.3.3. For Purchase Contracts signed by the Customer and accepted by Accuray within nine (9) months following the effective date of termination, Agent shall receive 40% of its Commission, paid in accordance with Sections 3.9 (Payment) and 3.10 (Commission) above; and

5.6.2. **Transition of Activities.** Accuray and Agent agree to negotiate in good faith an orderly transition of Agent's sales rights and activities and Agent agrees to assist in the transition.

5.6.3. **Pending Obligations.** Each party must still fulfill any obligations, including but not limited to pending Purchase Requests, accrued on or before the effective date of such termination.

5.7. **Termination Transition Assistance.** Immediately following termination, as applicable, Agent shall transfer to Accuray upon Accuray's request: Accuray's parts inventory, which Accuray will repurchase at its original cost; any regulatory clearances, licenses or permits obtained for conduct of the business in Territory; any Confidential Information; and other items as will be negotiated in good faith between the parties. Furthermore, the parties agree to cooperate fully with the other for any reasonable transition assistance required in the case of termination or expiration of this Agreement. Q: Check with Doug K. re storage/stocking of spare parts by Agent.

5.8. **Agent's Right to Support.** If Agent has continuing obligations to support Customers, Accuray will continue to provide support to Agent for it to effectively support such Customers.

5.9. **No Termination Compensation.** Agent waives any rights it may have to receive any compensation or indemnity upon termination or expiration of this Agreement, other than as expressly provided in this Agreement. Agent acknowledges that it has no expectation and has received no assurances that any investment by Agent in the promotion of the Products will be recovered or recouped or that Agent will obtain any anticipated amount of profits by virtue of this Agreement.

5.10. **Accruals.** No termination of this Agreement will terminate any obligation of payment which has accrued prior to the effective date of such termination.

5.11. **Repurchase of Parts and Tools.** Within a reasonable time after the effective date of termination, Agent can sell all parts either to Accuray or Accuray's designated agent in the Territory all parts and tools owned by Agent, which may still commercially reasonably be used to service a CyberKnife in the Territory, at Agent's cost, without profit. Q: Check with Doug K. re storage/stocking of spare parts by Agent.

6. Dispute Resolution

6.1. **Applicable Law.** This Agreement shall be subject to and controlled by the laws of the State of California, not including either the choice of law/conflict of laws rules of California or international treaties (such as the U.N. Convention on Contracts for the International Sale of Goods) which would otherwise be applicable in California. Agent hereby agrees and submits to a venue in the State of California.

6.2. **Notification and Discussion.** Accuray and Agent hereby irrevocably and unconditionally agree as follows: Should any dispute arise between the parties relating to this Agreement or the business relationship between the parties, such dispute shall be submitted by one or both parties, in writing, to the Chief Executive Officer of Agent and the Chief Executive Officer of Accuray for resolution. The parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy.

6.3. **Process.** Any controversy, claim or dispute arising out of or relating to this Agreement, including without limitation, the construction, interpretation, validity, enforcement, performance, lack or failure of performance or breach of this Agreement, or the rights, duties or liabilities of a party under this Agreement, that cannot be resolved by agreement of the parties within forty-five (45) days of the matter being raised in writing, and either party wishes to pursue the matter, the controversy, claim or dispute shall be referred to further dispute resolution processes in accordance with Exhibit F.

6.4. **Confidential Information.** Any breach of Accuray or Agent intellectual property or confidential information as described in Section 7 (Confidentiality) below or related obligations of this Agreement will cause the injured party irreparable harm for which money damages shall be an inadequate remedy and difficult to ascertain. Consequently, notwithstanding anything else in this Agreement to the contrary, in the event of any such threatened or actual breach, the injured party will be entitled to seek equitable relief in any court having jurisdiction on any claim based upon the actual or imminent misuse or unauthorized disclosure of the injured party's intellectual property or confidential information, including preliminary injunctions restraining such breach and specific performance of the other party's obligations and covenants in such sections. Such equitable relief shall be in addition, and without prejudice, to any other remedies available to the injured party at law or under this Agreement for any such breach or threatened breach. If the injured party seeks injunctive relief, such action shall not constitute a waiver of the provisions of this Agreement to arbitrate, which shall continue to govern any and every dispute between the parties including, without limitation, the right of damages, permanent injunctive relief, and any other remedy at law or in equity.

7. Confidentiality.

7.1. **Definition.** "Confidential Information" means: (i) any non-public information of a party, including, without limitation, any information relating to a party's current and planned products and services, technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) any other information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally, is identified as "Confidential" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure; and (iii) the specific terms and pricing set forth in this Agreement.

7.2. **Exclusions.** The obligations in Section 7.3 will not apply to the extent any information: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

7.3. **Obligations.** Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all commercially reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

8. Indemnities.

8.1. **Accuray Indemnity.** Accuray will defend or settle any action brought against Agent to the extent that it is based upon a third-party claim that a Product, as provided by Accuray to Customer under this Agreement, infringes any United States patent or any copyright or misappropriates any trade secret, and will pay any costs and damages made in settlement or awarded against Agent in final judgment resulting from any such claim, provided that Agent: (i) gives Accuray prompt notice of any such claim; (ii) gives Accuray sole control of the defense and any related settlement of any such claim; and (iii) gives Accuray, at Accuray's expense, all reasonable information, assistance and authority in connection with the foregoing. Accuray will not be bound by any settlement or compromise that Agent enters into without Accuray's express prior written consent.

8.2. **Products Liability Indemnity.** Accuray will defend or settle any action brought against Agent to the extent that it is based upon a third-party claim that a Product, as provided by Accuray to Customer under this Agreement is unsafe when used according to Accuray's written product specifications for its intended use, and will pay any costs and damages made in settlement or awarded against Agent in final judgment resulting from any such claim, provided that Agent: (i) gives Accuray prompt notice of any such claim; (ii) gives Accuray sole control of the defense and any related settlement of any such claim; and (iii) gives Accuray, at Accuray's expense, all reasonable information, assistance and authority in connection with the foregoing. Accuray will not be bound by any settlement or compromise that Agent enters into without Accuray's express prior written consent.

8.3. **Injunctions.** If Agent's rights to market and sell a Product under the terms of this Agreement is, or in Accuray's opinion is likely to be, enjoined due to the type of claim specified in Section 8.1 (Accuray Indemnity), then Accuray may, at its sole option and

expense: (i) procure for Agent the right to continue to market and sell such Product under the terms of this Agreement; (ii) replace or modify such Product so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite Accuray's reasonable efforts, then Accuray may terminate Agent's rights and Accuray's obligations hereunder with respect to such Product.

8.4. **Indemnity Exclusions.** Accuray will have no obligation under Sections 8.1 (Accuray Indemnity) or 8.2 (Products Liability Indemnity) for any third-party claim to the extent that such claim results from: (i) representations from Agent regarding use of any Products not in accordance with Accuray's written product specifications; (ii) representations from Agent regarding use or combination of the Products with other items, such as other equipment, processes, programming applications or materials not furnished by Accuray; (iii) compliance by Accuray with Agent's or Agent's Customer's designs, specifications or instructions; (iv) representations from Agent regarding modifications to a Product other than by or at the express written direction of Accuray; (v) Agent's failure to provide to Customer updated or modified written product specifications provided by Accuray; (vi) Agent's marketing, sale or distribution of a Product other than in accordance with this Agreement or (vii) Agents contracts with other manufacturers, including Elekta and manufacturers of products and services that compete with Accuray. The foregoing clauses (i) to (vii) are referred to collectively as "Indemnity Exclusions".

8.5. **Limitation.** THE FOREGOING PROVISIONS OF THIS SECTION 8 SET FORTH ACCURAY'S SOLE AND EXCLUSIVE LIABILITY AND AGENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND OR PRODUCTS LIABILITY.

8.6. **Agent Indemnity.** Agent will defend or settle, indemnify and hold Accuray harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) Agent's acts or omissions; (ii) any misrepresentations made by Agent with respect to Accuray or the Products or Services; or (iii) an Indemnity Exclusion.

9. Liability.

9.1. **Exclusion of Certain Damages.** IN NO EVENT WILL ACCURAY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOSS OF USE, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL), OR FOR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY ACCURAY PRODUCTS OR SERVICES PROVIDED BY ACCURAY, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT ACCURAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9.2. **Total Liability.** ACCURAY'S TOTAL LIABILITY TO AGENT UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE COMMISSIONS ACTUALLY EARNED BY

AGENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE A CLAIM FOR LIABILITY ARISES HEREUNDER.

9.3. **Basis of Bargain.** The parties expressly acknowledge and agree that Accuray has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Accuray and Agent and form an essential basis of the bargain between the parties.

10. Miscellaneous Provisions

10.1. **Publicity.** Agent may not use Accuray's name or trademarks on its literature, signs, or letterhead, nor may it make press releases or other public statements disclosing its relationship with Accuray under this Agreement or otherwise without the prior written consent of Accuray, which shall not be unreasonably withheld.

10.2. **Good Will.** Agent agrees that it will help develop and work to preserve the good will of Accuray within the Territory, and will not unreasonably harm that good will. In the event of termination of this Agreement for any reason, Agent will not do anything to unreasonably harm the good will of Accuray within the Territory.

10.3. **Titles.** Titles of the various paragraphs and sections of this Agreement are for ease of reference only and are not intended to change or limit the language contained in those paragraphs and sections.

10.4. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent. However, Accuray may assign this Agreement, without Agent's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

10.5. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with the carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with the carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Agent:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	

10.6. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

10.7. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

10.8. **Survival.** The expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth herein which (a) the parties have expressly agreed will survive any such expiration or termination; or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration. In addition to the foregoing, the following provisions shall survive any termination or expiration of this Agreement: Agreement: Section 2.7 (Warranty); Section 2.8.3 (Warranty Exclusions); Section 3.17 (Warranty); Section 3.20 (First Line Field Service); Section 3.25 (Insurance); Section 5.6 (Effect of Termination); Section 5.7 (Termination Transition Assistance); Section 5.8 (Agent's Right to Support); Section 6 (Dispute Resolution); Section 7 (Confidentiality); Section 8 (Indemnities); Section 9 (Liability) and Section 10 (Miscellaneous Provisions).

10.9. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

10.10. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

10.11. **English Language Requirement.** This Agreement is written in the English Language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects.

10.12. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

10.13. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

AGENT:	**ACCURAY INCORPORATED:**
By:	**By:**
Print name:	**Print name:** Robert E. McNamara
Title:	**Title: Sr. Vice President & Chief Financial Officer**
Date:	**Date:**

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

EXHIBIT A

PRODUCTS AND SERVICES (INCLUDING CURRENT PRICING)

BASE CYBERKNIFE® G4 CONFIGURATION—ACCURAY LIST PRICE

QTY	PRODUCT DESCRIPTION CYBERKNIFE® ROBOTIC RADIOSURGERY SYSTEM ROBOTIC TREATMENT DELIVERY SYSTEM Imaging System	PART #'s 022986 021942	PRICE IN USD $4,100,000 Incl.
1	In-floor Imaging Frame		Incl.
2	Amorphous Silicon Detectors (40 cm × 40 cm)		Incl.
2	X-Ray Generators		Incl.
2	X-Ray Sources		Incl.
1	Rack mounted Imaging System PC		Incl.
	Linear Accelerator	**021938**	**Incl.**
1	Compact 6MV Linac—600 MU/minute dose rate		Incl.
1	Secondary Collimator Kit—5 mm, 7.5 mm, 10 mm, 12.5 mm, 15 mm, 20 mm, 25 mm, 30 mm, 35 mm, 40mm, 50 mm, 60 mm, Blank, Laser Collimator		Incl.
1	Control Modulator Control Chassis		Incl.
1	Contact Detection System		Incl.
	Robotic Manipulator System	**022866**	**Incl.**
1	Robotic Manipulator KR240		Incl.
1	Manipulator Control Software		Incl.
1	In-Floor Manipulator Frame		Incl.
	AXUM™ Automated Patient Positioning System	**020680**	**Incl.**
1	Treatment Couch and Couchtop		Incl.
1	Treatment Couch Controller Software		Incl.
1	Treatment Couch Hand Pendant		Incl.
1	Treatment Couch Readout Display		Incl.
1	Treatment Couch Head Baseplate		Incl.
2	Med-Tec Indexed CT Overlay Kits (CT Overlay + Head Baseplate)		Incl.
	Sub-System Controls and Hardware Components	**Various**	**Incl.**
1	SGI Octane II Workstation (Treatment Delivery Computer)		Incl.
	21" Flat Panel Display		Incl.
1	Equipment Rack		Incl.
1	Operator Control Console		Incl.
1	Interface Control Chassis		Incl.
1	E-Stop Control Chassis		Incl.
1	Target Locating Subsystem Control Chassis		Incl.
1	Power Distribution Unit		Incl.
1	17" High resolution CRT Monitor		Incl.
1	Keyboard & Mouse		Incl.

1	Serial Port Server		Incl.
1	SMART (Uninterruptible Power Supply)		Incl.
1	2550n HP Color Laser Printer		Incl.
	Treatment Delivery System Software	**Various**	**Incl.**
1	Treatment Delivery Software		Incl.
1	Treatment Delivery Software License		Incl.
1	Cranial Treatment Skull Tracking License		Incl.
1	Extra-cranial Treatment with Fiducial Tracking License		Incl.
1	Patient Record Database		Incl.
	TREATMENT PLANNING SYSTEM		
	CyRIS™ MultiPlan—Treatment Planning System	**021695**	**Incl.**
1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		Incl.
	Monitor:(1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		
	1 Year Manufacturer (DELL) Warranty		
1	Product Software		
	Microsoft Windows XP Professional SP1, NTFS w/Media		
	1 Perpetual License MultiPlan—Treatment Planning System		
1	Startup Wizard and Planning Templates		
	CLINICAL APPLICATION MODULES		
	Synchrony™ Respiratory Tracking System	**023119**	Incl.
1	Synchrony computer and Synchrony software		Incl.
1	Synchrony Camera Array		Incl.
1	Fiber Optic Interface Kit		Incl.
1	Synchrony Single-Patient Use Starter Kit (3 individual patient kits)		Incl.
	Each Single-Patient Use kits contains:		
	—Synchrony Tracking Vest (small, medium or large)		
	—Tracking Marker Assembly (3 Markers attached to cables and a connector)		
	—Kit Storage Pouch with IFU & Identification Card		
	Xsight™ Spine Tracking System	**22078**	**Incl.**
1	1 Perpetual License Fiducial-Less Spine Tracking Software		
1	1 Xsight QA Phantom	20855	Incl.
	ACCESSORIES & TRAINING		
	QA Tools	**020580**	Incl.
1	Anthropomorphic 6D Head Phantom		Incl.
1	Ball Cube		Incl.

1	Pre-notched Dosimetry Film (20 Pieces)		Incl.
1	Digital Level ($^{1}/_{10}$ degree)		Incl.
1	Ion Chamber Test Fixture		Incl.
1	ISO Post Assembly		Incl.
1	Alignment Ball		Incl.
1	Pointer Calibration & Front Pointer		Incl.
1	AQA Tools		Incl.
	Manuals	**Various**	**Incl.**
1	CyberKnife® System Manuals		Incl.
1	Robotic Manipulator System Manuals		Incl.
1	Chiller Manual		Incl.
1	X-ray Detector Manuals		Incl.
1	Accuray 6MEV Medical X-ray CD		Incl.
	Training		**Incl.**
1	Technical & Clinical—5 people		Incl.
1	Onsite Training for first patient treatment		Incl.
1	Basic Physics and QA		Incl.

NOTE **Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices shown in USD as specified.**

	ADDITIONAL OPTIONS **Synchrony™ Respiratory Tracking System Accessories**	**PART #**	**PRICE IN USD**
1	Synchrony Single-Patient Use Kit, 5 Pack, Small	20904	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Medium	20905	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Large	20906	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Small	20883	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Medium	20891	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Large	20893	TBD
1	Synchrony Patient Kit, 10 Pack, Assorted	20894	TBD
	Includes 3 Small, 4 Medium & 3 Large Vests		
	SGI Computer Upgrade Components		
1	73 BG Hard Drive	20534	TBD
1	SGI 181 GB Hard Drive	20533	TBD
1	SGI Memory, 1GB (2 × 512Mb)	18672	TBD
1	Cable Kit Add Octane to Hub	18326	TBD
1	20' Flat Panel Monitor	20483	TBD
	CyRIS™ InView—Image Fusion and Contouring Station	**22086**	**TBD**

1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		Incl.
	Monitor: (1) 21" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		
	1 Year Manufacturer (DELL) Warranty		
1	Product Software		Incl.
	Microsoft Windows XP Professional SP1, NTFS w/Media		
	Perpetual License InView—Image Fusion and Contouring Station		Incl.
1	Software Maintenance Fee		TBD
	Maintenance Fee of $TBD/yr/System will also be billed at the anniversary of installation and every year thereafter		
	CyRIS™ MultiPlan—Treatment Planning System	**21695**	**TBD**
1	DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)		Incl.
	Monitor:(1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		
	1 Year Manufacturer (DELL) Warranty		
1	Product Software		Incl.
	Microsoft Windows XP Professional SP1, NTFS w/Media		
	Perpetual License MultiPlan—Treatment Planning System		Incl.
1	Software Maintenance Fee		TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter		
	Additional Patient Setup Items		
1	Additional Indexed CT Overlay Kits (CT Overlay + Head Baseplate)		TBD
1	CT Top Kit—Siemens Volume	20775	TBD
1	CT Top Kit—Siemens Somatom	20776	TBD
1	CT Top Kit—GE LiteSpeed	20777	TBD
1	CT Top Kit—GE Discovery	20778	TBD
1	CT Top Kit—GE HiSpeed	20779	TBD
1	Immobilization Starter Kit	021037	TBD
	Body Treatment Fiducial Kit		
1	Fiducial Instrument Set	18985	TBD
1	Single Pk Fiducial	19005	TBD
1	5 Pk Fiducial	19006	TBD
1	10 Pk Fiducial	19007	TBD
	Additional QA Options		
1	Alignment jig 6D—20cm	17722	TBD
1	Head Phantom Kit (contains ball cube)	18161	TBD
1	GAF Chromic Film (20 pack)	17895	TBD
1	Film Ball cube (20 pack)	19366	TBD

1	Body Phantom Kit (contains film cube)	17801	TBD
1	Color Dye Diffuse Printer **(Upgrade) (Not defined or Released)**	TBD	TBD
1	AQA Tools	22349	TBD
	System Installation		**TBD**
1	Floor Frame Install		
1	System Qualification		
1	Installation Kit		
	Extended Parts Warranty (Parts Only, No Labor)		**$175,000**
	One Year—Replacement of Defective Parts		
	Emerald Agreement (Basic Service and Parts)		**$275,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
	Ruby Agreement (Software Upgrades, Basic Service and Parts)		**$380,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
	Diamond Agreement (Software & Hardware Upgrades, Basic Service & Parts)		**$460,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
NOTE	**Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices shown in USD as specified.**		

BASE CYBERKNIFE® G3 CONFIGURATION—ACCURAY LIST PRICE

QTY	PRODUCT DESCRIPTION CYBERKNIFE® ROBOTIC RADIOSURGERY SYSTEM ROBOTIC TREATMENT DELIVERY SYSTEM Imaging System	PART #'s 21682 20829	PRICE IN USD $3,840,000 Incl.
1	Imaging Stands (Low)		Incl.
2	Amorphous Silicon Detectors (20 cm × 20 cm)		Incl.
2	X-Ray Generators		Incl.
2	X-Ray Sources		Incl.
1	Rack mounted Target Locating PC		Incl.
	(Requires Octane Software—See CyberKnife Software System below)		
	Linear Accelerator	**20404**	**Incl.**
1	Compact 6MV Linac—400 MU/minute		Incl.
1	Secondary Collimator Kit—5 mm, 7.5 mm, 10 mm, 12.5 mm, 15 mm, 20 mm, 25 mm, 30 mm, 35 mm, 40mm, 50 mm, 60 mm, Blank, Laser Collimator		Incl.
1	Control Modulator Control Chassis		Incl.
	Robotic Manipulator System	**20554**	**Incl.**
1	Robot Manipulator KR210		Incl.
1	Robot Control Software		Incl.
	AXUM™ Automated Patient Positioning System	**20680**	**Incl.**
1	AXUM™ Treatment Couch		
1	AXUM™ Treatment Couchtop		
1	AXUM™ Controller Software		
1	AXUM™ Hand Pendant		
1	AXUM™ Readout Display		
1	AXUM™ Head Baseplate		
2	Med-Tec Indexed CT Overlay Kits (CT Overlay + Head Baseplate)		
	Sub-System Controls and Hardware Components	**Various**	**Incl.**
1	Equipment Rack		Incl.
1	Operator Control Console		Incl.
1	Interface Control Chassis		Incl.
1	E-Stop Control Chassis		Incl.
1	Target Locating Subsystem Control Chassis		Incl.
1	Power Distribution Unit		Incl.
1	17" High resolution CRT Monitor		Incl.
1	Keyboard & Mouse		Incl.
1	Serial Port Server		Incl.
1	**SGI Octane II Workstation (Primary Treatment Delivery System and Treatment Planning System)**		Incl.
	21" Flat Panel (Optional 21" CRT Monitor Available—see options section)		

1	SMART (Uninterruptible Power Supply)		Incl.
1	2550n HP Color Laser Printer		Incl.
	Treatment Delivery System Software	**20389**	**Incl.**
1	**Octane Software**		Incl.
1	Treatment Delivery Software License		Incl.
1	Cranial Treatment Skull Tracking License		Incl.
1	Extra-cranial Treatment with Fiducial Tracking License		Incl.
1	Patient Record Database		Incl.
	TREATMENT PLANNING SYSTEM		
	CyRIS™ MultiPlan™—Treatment Planning System	**21695**	**Incl.**
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**		Incl.
	(1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		
	1 Year Manufacturer (DELL) Warranty		
1	**Product Software**		Incl.
	Microsoft Windows XP Professional SP1, NTFS w/Media		
1	Perpetual License MultiPlan—Treatment Planning System		Incl.
	CLINICAL APPLICATION MODULES		
	Synchrony™ Respiratory Tracking System	**23119**	**Incl.**
1	Synchrony computer and Synchrony software		Incl.
1	Synchrony Camera Array		Incl.
1	Fiber Optic Interface Kit		Incl.
1	Synchrony Single-Patient Use Starter Kit (3 individual patient kits)		Incl.
	Each Single-Patient Use kits contains:		
	—Synchrony Tracking Vest (small, medium or large)		
	—Tracking Marker Assembly (3 Markers attached to cables and a connector)		
	—Kit Storage Pouch with IFU & Identification Card		
1	**Xsight™ Spine Tracking System**	**22078**	**Incl.**
1	Perpetual License Fiducial-Less Spine Tracking Software		Incl.
1	Xsight QA Phantom	20855	Incl.
	ACCESSORIES & TRAINING		
	QA Tools	**20580**	**Incl.**
1	Anthro 6D Head Phantom	18880	Incl.
1	Ball Cube	19364	Incl.
1	Pre-notched Dosimetry Film (20 Pieces)	19366	Incl.
1	Digital Level ($^{1}/_{10}$ degree)	17832	Incl.
1	Ion Chamber Test Fixture	10181	Incl.

1	Assy ISO Post	18901	Incl.
1	Alignment Ball	16954	Incl.
1	Pointer Calibration & Front Pointer	010370 & 016997	Incl.
1	AQA Tools		Incl.
	Manuals and CD's	**Various**	**Incl.**
1	CyberKnife® System Manuals & CD's		Incl.
1	Kuka® Manipulator System Manuals		Incl.
1	Chiller Manual		Incl.
1	X-ray Detector Manuals		Incl.
1	Accuray 6MEV Medical X-ray CD		Incl.
	Training		**Incl.**
1	Technical & Clinical—5 people		Incl.
1	Onsite Training for first patient treatment		Incl.
1	Basic Physics and QA		Incl.
NOTE	**Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices shown in USD as specified.**		

	ADDITIONAL OPTIONS **Synchrony™ Respiratory Tracking System Accessories**	**PART #**	**PRICE IN USD**
1	Synchrony Single-Patient Use Kit, 5 Pack, Small	20904	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Medium	20905	TBD
1	Synchrony Single-Patient Use Kit, 5 Pack, Large	20906	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Small	20883	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Medium	20891	TBD
1	Synchrony Single-Patient Use Kit, 10 Pack, Large	20893	TBD
1	Synchrony Patient Kit, 10 Pack, Assorted	20894	TBD
	Includes 3 Small, 4 Medium & 3 Large Vests		
	Linear Accelerator Upgrade: 600 MU/minute	**23120**	**TBD**
	Imaging System Upgrade		**TBD**
1	**Imaging System Upgrade: In Floor**	**23121**	TBD
1	**Imaging System Upgrade: On Floor**	**23122**	TBD
	SGI Computer Upgrade Components		
1	73 BG Hard Drive	20534	TBD
1	SGI 181 GB Hard Drive	20533	TBD
1	SGI Memory, 1GB (2 × 512Mb)	18672	TBD
1	Cable Kit Add Octane to Hub	18326	TBD

1	20' Flat Panel Monitor	20483	TBD
	CyRIS™ InView—Image Fusion and Contouring Station	**22086**	**TBD**
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**		
	Minimal Processing Capability: Intel Pentium IV, 3.2GHz, Intel EM64T, 1m L2 Cache, 800 FSB MHz CPU		
	Memory (RAM)—4GB, 533MHz, DDR2 ECC SDRAM 4X1GB		
	Hard Drive: Minimum Capacity: 160 GB SATA 7200 RPM		
	Video Card: nVidia, Quadro 3400, 256MB, Dual VGA or DVI or Better		Incl.
	Key Board: Entry Level Keyboard PS/2, No Hot Keys		
	CD-ROM: 48x CD-RW and 16 XD DVD+/-RW		
	Mouse: DELL USB 2-Button Optical Mouse with Scroll		
1	Monitor: (1) 21" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		Incl.
	1 Year Manufacturer (DELL) Warranty		
1	**Product Software**		Incl.
	Microsoft Windows XP Professional SP1, NTFS w/Media		
1	Perpetual License InView—Image Fusion and Contouring Station		
1	**Software Maintenance Fee**		TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter		
	CyRIS™ MultiPlan—Treatment Planning System	**21695**	**TBD**
1	**DELL Precision Workstation (Desktop or Minitower—Model 370 or Higher)**		
	Monitor:(1) 20" Flat Panel Monitor—Model: Samsung Syncmaster 213T Flat Panel		Incl.
	1 Year Manufacturer (DELL) Warranty		
1	**Product Software**		Incl.
	Microsoft Windows XP Professional SP1, NTFS w/Media		
	Perpetual License MultiPlan—Treatment Planning System		Incl.
1	**Software Maintenance Fee**		TBD
	Maintenance Fee of TBD/yr/System will also be billed at the anniversary of installation and every year thereafter		
	Additional Patient Setup Items		
1	**Additional Indexed CT Overlay Kits (CT Overlay + Head Baseplate)**		TBD
1	CT Top Kit—Siemens Volume	20775	TBD
1	CT Top Kit—Siemens Somatom	20776	TBD
1	CT Top Kit—GE LiteSpeed	20777	TBD
1	CT Top Kit—GE Discovery	20778	TBD
1	CT Top Kit—GE HiSpeed	20779	TBD
1	Immobilization Starter Kit	021037	TBD

	Body Treatment Fiducial Kit		
1	Fiducial Instrument Set	18985	TBD
1	Single Pk Fiducial	19005	TBD
1	5 Pk Fiducial	19006	TBD
1	10 Pk Fiducial	19007	TBD
	Additional QA Options		
1	Alignment jig 6D—20cm	17722	TBD
1	Head Phantom Kit (contains ball cube)	18161	TBD
1	GAF Chromic Film (20 pack)	17895	TBD
1	Film Ball cube (20 pack)	19366	TBD
1	Body Phantom Kit (contains film cube)	17801	TBD
1	Color Dye Diffuse Printer **(Upgrade) (Not defined or Released)**	TBD	TBD
	System Installation		**TBD**
1	Floor Frame Install		
1	System Qualification		
1	Installation Kit		
	Extended Parts Warranty (Parts Only, No Labor)		**$175,000**
	One Year—Replacement of Defective Parts		
	Emerald Agreement (Basic Service and Parts)		**$275,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
	Ruby Agreement (Software Upgrades, Basic Service and Parts)		**$380,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
	Diamond Agreement (Software & Hardware Upgrades, Basic Service & Parts)		**$460,000**
	Requires Distributor to provide First-Line Field Service.		
	Includes service for up to 2 Multiplan and 3 InView systems		
NOTE	**Products may not all be available in all countries, as product availability is subject to proper regulatory approval in each country. All prices shown in USD as specified.**		

EXHIBIT B

PRODUCT AND SERVICE MINIMUM VOLUMES

During the initial term of this Agreement, Agent agrees to sell a minimum number of Systems per year as follows:

- TBD

"Sale" shall mean that Accuray receives and accepts (such acceptance not to be unreasonably withheld) a signed Purchase Contract from a Customer.

EXHIBIT C

SALES AGENT COMMISSION

CyberKnife System Commission

CyberKnife G3 System

Purchase Price	Commission %	Commission $$	Accuray $$
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD

CyberKnife G4 System

Purchase Price	Commission %	Commission $$	Accuray $$
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD
TBD	TBD	TBD	TBD

Service Agreement Commission

Service Agreement Commission

Service Agreement	Accuray List Price	Agent Minimum Price	Commission %
Diamond Elite Service	$ 460,000.00	TBD	TBD
Ruby Elite Service	$ 380,000.00	TBD	TBD
Emerald Elite Service	$ 375,000.00	TBD	TBD
Extended Parts Warranty	$ 175,000.00	TBD	TBD
Additional Upgrade Agreement	$ 200,000.00	TBD	TBD

EXHIBIT D

TRAINING

Training is included with the purchase of a CyberKnife to the extent listed in **Exhibit A**. Accuray will be responsible for the travel and accommodation expenses of its personnel. Agent will be responsible for the travel and accommodation expenses of any Agent personnel.

Additional training maybe purchased from Accuray according to the following price list, which may be updated from time to time. Customers should contract directly with Accuray for additional training services, and no Purchase Request is required.

Additional Training

#	Course	Duration	Price †
1	CyberKnife Product Training—Surgeon	1.5 Days	TBD
1	CyberKnife Product Training—RTT	1.5 Days	TBD
1	CyberKnife Product Training—Radiation Oncologist	2.5 Days	TBD
1	CyberKnife Product Training—Physicist	4.5 Days	TBD

† Payable to the Accuray Training Department in advance. Training will be held at Accuray Corporate Headquarters or at a designated training center. Travel and accommodation not included.

EXHIBIT E

ACCURAY INTERNATIONAL SERVICE AGREEMENTS TERMS SUMMARY ±

	Terms	Accuray List Price U$D	Agent Minimum Price U$D
Extended Parts Warranty	• Term: 1 year (after Standard Warranty Year), Optional 2nd • Replacement Parts only • No Updates or Bug Fixes • No Upgrades • No Uptime Guarantee • No Labor	$175,000 / year	TBD
Emerald Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Updates & Bug Fixes only • No Upgrades • Service: 8am—9pm local time • First Line Field Service—Agent, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95%	$275,000 / year $72,000 / quarter $25,000 / month	TBD
Ruby Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Updates & Bug Fixes • Upgrades (2 SW/year)—when and if available • Service: 8am—9pm local time • First Line Field Service—Agent, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95%	$380,000 / year $98,000 / quarter $34,000 / month	TBD

Diamond Elite	• Term: 4 years (incl. Standard Warranty Year), Optional 5th • All Parts included • Upgrades (2 HW or SW/year)—when and if available • Service: 8am—9pm local time • First Line Field Service—Agent, 1 hour Response Time • Escalated Service—Accuray, 24 hour Response Time • Uptime: 95%	$460,000 / year $120,000 / quarter $41,000 / month	TBD
Additional Upgrade Agreement	• Term: 1, 2, 3 or 4 years • Upgrades (2/year)—when and if available) • Available only to customers with currently effective, paid-up Diamond Elite Service Agreement	$200,000 / year	TBD

± Int'l Agreements are not cancelable.

SAMPLE SERVICE AGREEMENTS

The following are samples of the Service Agreements with U.S. Dollar pricing. The sample Service Agreements are by way of example only, and, subject to Section 2.4 (Product and Service Pricing), the specific terms of the agreements are subject to change without notice.

CYBERKNIFE® INTERNATIONAL DIAMOND ELITE SERVICE AGREEMENT

1. *Scope of Service.* This Diamond Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades/Enhancements that have a

higher list price, as more than a single Upgrade/Enhancement to Customers under this Agreement. If Accuray offers Upgrades/Enhancements that have a higher list price as more than a single Upgrade/Enhancement then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- ANNUAL: $460,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- QUARTERLY: $120,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- MONTHLY: $41,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which

Accuray will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Upgrades/Enhancements may be software, hardware or a combination thereof.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Accuray to offer that particular Upgrade/Enhancement under this Diamond Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Diamond coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Diamond coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and

regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation.* Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO

EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
	Title:
Title: Vice President of Customer Service and Technical Support	
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed:	Dated:
General Counsel, Accuray Inc.	

ACCURAY CYBERKNIFE® INTERNATIONAL RUBY ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Ruby Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date*. This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software containing major new features, functionality and/or performance improvements that would enable the existing software configuration to perform to the level of the next version of the software configuration and designed to replace the older software version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades/Enhancements that have a higher list price, as more than a single Upgrade/Enhancement to Customers under this Agreement. If Accuray offers Upgrades/Enhancements that have a higher list price as more than a single Upgrade/Enhancement then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- o ANNUAL: $380,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: $98,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: $34,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Accuray will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Any hardware enhancements offered by Accuray will be quoted and sold separately from the software Upgrades/Enhancements provided for in this Agreement.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Accuray to offer that particular Upgrade/Enhancement under this Ruby Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Ruby coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Ruby coverage on same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product

features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.6. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.7. *Guarantee*. Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.8. *Calculation*. Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.9. *Reports*. Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.10. *Failure to Meet Guarantee*. For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be

disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR

OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information*. In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment*. Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All

communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 with cc to: General Counsel	

17. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By: _____	By: _____
Print Name: Doug Keare	Print Name: _____
Title: Vice President of Customer Service and Technical Support	Title: _____
Date: _____	Date: _____

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed:	Dated:
_____	_____
General Counsel, Accuray Incorporated	

ACCURAY CYBERKNIFE® INTERNATIONAL EMERALD ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Emerald Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date*. This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. *Definitions*:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year

(the "Optional Year 5"). Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Emerald coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Emerald coverage on same terms as the previous Agreement years. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- o ANNUAL: $275,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: $72,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: $25,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment To Be Covered*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. Customer is not entitled to any Upgrades/Enhancements or New Versions/New Products under this Agreement. Customer may purchase Upgrades/Enhancements and New Versions/New Products separately, and such Upgrades/Enhancements or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive

maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.11. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.12. *Guarantee*. Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.13. *Calculation*. Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.14. *Reports*. Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.15. *Failure to Meet Guarantee*. For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material

that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information*. In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment*. Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All

communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 with cc to: General Counsel	

17. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed:	Dated:
General Counsel, Accuray Incorporated	

CYBERKNIFE® INTERNATIONAL EXTENDED PARTS WARRANTY AGREEMENT

1. *Scope of Warranty*. This is a Warranty Agreement ("Warranty Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide replacement of all defective parts when requested by Customer to maintain the CyberKnife System installed at site at ("System") so that it performs substantially in accordance with the specifications defined for the System revision as installed and/or updated under this Warranty Agreement, or upgraded under a separate agreement with Customer.

2. *Warranty Period*. This Warranty Agreement shall be for an initial period of one (1) year, beginning one (1) year after the date of demonstration of System acceptance testing to Customer ("Effective Date"), with an optional second year. The Agreement price shall be $ paid in advance. Customer may elect to receive an additional optional second year at the price of $. Customer may exercise the option for optional second year by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to twenty (20) days before the optional second year commences. If Customer exercises the option, Accuray is obligated to provide Extended Parts Warranty coverage on the same terms as the previous Agreement year. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

3. *Equipment to be Covered*. The Warranty Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray, and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Warranty Agreement must immediately commence at the expiration of the factory warranty period.

4. *Replacement Parts*

4.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

4.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

5. *Warranty Exclusions*. All warranty replacement of parts shall be limited to malfunctions which are due and traceable to defects in original material or workmanship of the parts. The warranties set forth in this Warranty Agreement shall be void and of no further effect in the event of abuse, accident, alteration, misuse or neglect of the System or its component parts, including but not limited to user modification of the operating environment specified by Accuray.

6. *Exceptions*

6.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

6.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

6.1.2. The intentional abuse of the System or negligence by Customer.

6.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

6.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

6.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

6.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

7. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 8 "Breach."

8. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

9. *Limitation of Liability and Warranty*

9.1. *Limitation of Liability*. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE SYSTEM.

9.2. *Warranty*. Accuray warrants that, for the Term of this Warranty Agreement, the Products will be free from defects and perform substantially in accordance with the written specifications provided by Accuray as reflected in the Regulatory clearance at the time of sale. Except as set forth in the preceding sentence, Accuray makes no warranties or representations to Customer or to any other party regarding any products or services provided by Distributor. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ACCURAY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

10. *Assignment*. Neither party may assign this Warranty Agreement without the other party's prior written consent, except that Accuray may assign this Warranty Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Warranty Agreement relates. Subject to the foregoing, this Warranty Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

11. *Dispute Resolution*

11.1. *Informal Dispute Resolution*. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within thirty (30) days from the date of receipt of the claim document. The party filing the claim shall have an additional thirty (30) days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the Chief Executive Officer of Accuray and the Chief Executive Officer or the highest ranking officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

11.2. *Jurisdiction and Venue*. All disputes under any contract concerning this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction in the County of Santa Clara, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

12. *Notices*. All notices required or permitted under this Warranty Agreement will be in writing and delivered in person, by confirmed facsimile transmission, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth

below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Sr. Vice President & CFO 1310 Chesapeake Terrace Sunnyvale, CA 94089 USA	Attention:
with cc to:	General Counsel

13. *Waiver*. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

14. *Severability*. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

15. *Force Majeure*. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

16. *Amendments*. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO or General Counsel.

17. *Entire Agreement*. This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

18. *Counterparts*. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed:	Dated:
General Counsel, Accuray Incorporated	

ACCURAY CYBERKNIFE® ADDITIONAL DIAMOND UPGRADE AGREEMENT

1. *Scope of Agreement.* This CyberKnife Additional Upgrade Agreement ("Agreement") is made effective as of , 2006 ("Effective Date"), by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide Upgrades/Enhancements, when and if available, to the CyberKnife System installed at Customer's site at ("System").

1.1. *Definitions*:

1.1.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.1.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.1.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.1.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.1.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades/Enhancements that have a higher list price, as more than a single Upgrade/Enhancement to Customers under this Agreement. If Accuray offers Upgrades/Enhancements that have a higher list price as more than a single Upgrade/Enhancement then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.1.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Term & Payment Terms*

2.1. Customer has option of selecting either a one (1) year, two (2) Upgrade/Enhancement or two (2) year, four (4) Upgrade/Enhancement Agreement plan, as set forth below. Customer shall indicate its preferred option by checking one of the boxes below, if no selection is made Customer will signed up for a one (1) year agreement. Customer may only select an Agreement Term commensurate with the remaining term of the initial four (4) year Diamond term. For example, if Customer has three (3) years remaining of the initial four (4) year Diamond term, then Customer may only sign up for a three (3) year Agreement Term or less and the four (4) year Agreement Term would not be available.

- o Option #1—One (1) Year Agreement

  If Customer elects this Option #1, the Agreement Term shall be one (1) year, during which time Customer may receive up to two (2) Upgrades/Enhancements. The Agreement Price for this Option #1 is $200,000.

- o Option #2—Two (2) Year Agreement

  If Customer elects this Option #2, the Agreement Term shall be two (2) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of four (4) Upgrades/Enhancements. The Agreement Price for this Option #2 is $200,000 per year, or $400,000 total.

- o Option #3—Three (3) Year Agreement

  If Customer elects this Option #3, the Agreement Term shall be three (3) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of six (6) Upgrades/Enhancements. The Agreement Price for this Option #3 is $200,000 per year, or $600,000 total.

- o Option #4—Four (4) Year Agreement

  If Customer elects this Option #4, the Agreement Term shall be four (4) years, during which time Customer may receive up to two (2) Upgrades/Enhancements per year, for a total of eight (8) Upgrades/Enhancements. The Agreement Price for this Option #4 is $200,000 per year, or $800,000 total.

2.2. Customer shall pay Accuray in advance of or on the Effective Date for the first year of this Agreement. For any subsequent years, the annual payment shall be due on or before the anniversary of the Effective Date. For example, payment for the second year of the agreement would be due on the first anniversary of the Effective Date.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement is only available in conjunction with the [DATE] Diamond Elite Service Agreement signed by the parties and currently in effect ("Diamond Agreement"), and provided that Customer is current with all payments due under the Diamond Agreement and has used all upgrades allowed under the initial four (4) year term of the Diamond Agreement.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available, up to the number of Upgrades/Enhancements elected in Section 2.1 above, up to two (2) Upgrades/Enhancements per year per year during the Term. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades/

Enhancements, and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Accuray will offer multiple Upgrades/Enhancements and Customer may select up to the contracted-for number of such Upgrades/Enhancements. If Customer selects an option other than the one (1) year Agreement in Option #1 above, Customer may receive more than two (2) Upgrades/Enhancements during the first year of the Agreement Term, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in the subsequent year(s) of the Agreement Term. For example, if Customer orders a third Upgrade/Enhancement during the first year of the Agreement Term, Customer will have the opportunity for up to one (1) Upgrade/Enhancement when and if it becomes available during the second year of the Agreement Term. Upgrades/Enhancements may be software, hardware, or a combination thereof.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which of the available Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which Upgrade(s)/Enhancement(s) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Accuray to offer that particular Upgrade/Enhancement under this Agreement would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the Agreement Term.

3.4. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance*

4.1. This Agreement does not include any software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. Such Updates and Bug Fixes are the subject of the Diamond Agreement.

4.2. Any Upgrades/Enhancements delivered pursuant to the terms of this Agreement will be considered part of Customer's System and will be serviced in accordance with the Diamond Agreement.

5. *No Cancellation*. Neither party shall have the right to cancel this Agreement, except as set forth below in Section 6 (Breach).

6. *Breach*. Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to: failure to make payment due under this Agreement; failure to provide access as required to install any Upgrades/Enhancements contemplated by this Agreement; cancellation, termination, suspension or breach of the Diamond Agreement; or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this

Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

7. *Notices*. All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray: **To Customer:**

Accuray Incorporated
Attention: Chief Financial Officer
1310 Chesapeake Terrace
Sunnyvale, CA 94089
with cc to: General Counsel

8. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

9. *Diamond Agreement.* The following terms and conditions of the Diamond Agreement shall apply to this Agreement, however, in the event of a conflict between the terms of the Diamond Agreement and this Agreement, the terms and conditions of this Agreement shall take precedence.

9.1. *System Quality Assurance Testing;*

9.2. *Service Coverage Period;*

9.3. *Limitation of Liability and Warranty;*

9.4. *Assignment;*

9.5. *Disputes and Governing Laws;*

9.6. *Waiver;*

9.7. *Severability;*

9.8. *Force Majeure; and*

9.9. *Amendments.*

10. *Entire Agreement.* This Agreement and the Diamond Agreement jointly contain the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

11. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED

By:

Print Name: Doug Keare

Title: Vice President of Customer Service and Technical Support

Date:

CUSTOMER

By:

Print Name:

Title:

Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED AN UPGRADE/ENHANCEMENT OPTION IN ACCORDANCE WITH SECTION 2.1, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

By:

Print Name: Darren J. Milliken
Title: General Counsel, Accuray Incorporated
Date:

EXHIBIT F

DISPUTE RESOLUTION

1. **Negotiation.** The parties shall attempt to resolve any dispute arising out of relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy, as set forth in **Section 6** of the Agreement.

2. **Mediation.** If the parties do not resolve the dispute within forty-five (45) days of undertaking negotiation thereof, either Party may refer the Dispute for mediation by the applicable mediation body (as provided below) or its successor (the "***Mediation Organization***") by providing the Mediation Organization and the other Party a written request for mediation, setting forth the details of the dispute and the relief requested. Each Party must then participate in the mediation in good faith and share equally in its costs. If a request for mediation is made, then the mediation shall take place in Santa Clara County, California. Mediation shall be conducted by JAMS or its successor, in accordance with the JAMS mediation rules and procedures then in effect. Any mediation taking place between the parties will be conducted by: (i) a mediator agreed to by the parties selected from the applicable Mediation Organization's panel of neutrals; or (ii) if the parties do not agree on a mediator, a mediator nominated by the applicable Mediation Organization. Any mediation taking place between the parties shall be conducted in the English language. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any Mediation Organization employees, are confidential, privileged and inadmissible for any purpose, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

3. **Arbitration.** If the dispute has not been resolved by non-binding means as provided herein within ninety (90) days of the initiation of such procedure, either party may initiate arbitration with respect to such matters at any time following the period provided for mediation, or determination by the mediator that the parties will not be able to resolve the issue through mediation, by filing a written request for arbitration to JAMS, as provided below, in accordance with JAMS arbitration procedures. If a request for arbitration is made, then the arbitration shall take place in Santa Clara County, California. Any arbitration taking place shall be conducted by JAMS or its successor, in accordance with the JAMS arbitration rules and procedures then in effect. Any arbitration taking place between the parties shall be conducted in the English language.

4. **Other Remedies.** Notwithstanding the foregoing, each Party shall have right before or during negotiation, mediation or arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the negotiations, mediation or arbitration.

EXHIBIT G

PARTS LIST AND PRICES

The following is a list of spare parts required for most likely service needs. There are three (3) "Kit" options, with an approximate costs of U.S. $TBD, $TBD and $TBD per kit. Additional parts may be needed for multiple units. Accuray will also maintain a central inventory in the region to supplement the Agent's in-country spare parts kit. Additional parts may be purchase separately from the identified Spare Parts Kits, and prices for such will be quoted by Accuray on receipt of a request from Agent.

Please note that the content of the following Spare Parts Kit Options are subject to change, though the prices of such Kits is subject to Section 2.4 (Product and Service Pricing).

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A	AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
X-Ray Head				
AFC Control PCA	01-3771-01	1	1	1
Phase Control PCA	01-4304-01	1	1	1
Phase Detector PCA	01-6164-01	1	1	1
AFC Power Supply Assy	01-4213-01		1	1
AFC Tuner Pot — New	021787	2	2	3
O'Ring Wave Guide	1200-00001			10
Laser	1000-00200	1	1	1
Laser Power Supply	4050-00001	1	2	3
Capacitor, 2500pf	1500-00020	3	3	6
Collimator Pot Assembly	01-7239-01	2	2	4
Assy Collimator Rot Lock	020183			3
Pulse Transformer Assy	01-7310-01	1	1	1
Despiking Resistor 2.0 kohm 50w	4700-00035	—	4	4
Bypass Cap 0.47 uF 600v-OBS-use 2 × 021444	1500-00064	—	2	2
0.1uF 1000V Capacitor	021444	—	2	2
Magnetron-Refurbished	018575			1
Mag//Pulse Xfmer Conn Assy	01-4651-01			1
Semi Ridgid Coax Assy	01-6268-01		1	1
Semi Ridgid Coax Assy	01-6269-01		1	1
Flex Waveguide	1000-00055		1	1
Dummy Load (Plastic)	021145			1
Hybrid Coupler	3450-00003			1

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A	AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
X-Ray Head, Cont'd				
Ion Chamber	01-7130-01		1	1
Laser Mirror	1000-00210	2	2	2
Crystal Diode, Neg	2300-00003		1	1
Crystal Diode, Pos	2300-00004		1	1
Fuse .5A SloBlo	4300-00004			10
Fuse .2A SloBlo	4300-00014			5
Fuse 1.5A SloBlo	4300-00026			5
Bridge Rectifier 200V 40A	4750-00007	2	2	2
Diode, Gen Purpose 1A	4800-00026	6	6	6
Modulator				
Thyratron DeQuing	5700-00001	1	1	1
Thyratron Deuterium (Main)	5700-00002	1	1	1
High Voltage wire 14g	6000-00080	5	5	5
HV Putty	1600-00170	1	1	1
Diode 7.5	4800-00024	3	3	3
Diode 10	4800-00022	3	3	3
Diode 15	4800-00021	3	3	3
Cap, PFN, .011uF 25KV	1500-00002	3	3	3
Relay 3 pdt 120 vac	4500-00002	1	2	3
Relay 4pdt	4500-00001	1	1	1
Relay 3 pdt 120 vac	4500-00003	1	1	1
Relay 3pdt 6vdc	4500-00005	1	1	1
Relay, Time Delay	4500-00009		1	1
XSFMR AUTO VAR W/DIAL&KNOB	5600-00007	—	1	1
Dequing Trigger Transformer	01-2699-01	1	1	1
Steering PS	4000-00020			1
Thyratron Driver PCA	01-1141-02	1	1	1
Ion Pump Monitor PCA	01-1617-01	1	1	1
High Voltage Divider PCA	01-3430-01			1
Dequing Trigger Generator PCA	01-3193-01	1	1	1
Thyratron Bias & Trigger PCA	01-3310-01	—	1	1
HV Rect 800V 8A	4750-00004	1	1	1
HV Rect 600V 8A	4750-00002	1	1	1
Lamp 28v,t1 3/4	2450-00032			2

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A	AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
Modulator Control Chassis				
Fault Logic	01-3906-01	1	1	1
Trigger Generator	01-1433-01	1	1	1
Mag/Accel Htr Cont	01-3126-01	1	1	1
Fault Indicator	01-6895-01	1	1	1
Control Logic	01-4344-01	1	1	1
MCC/IFCC Interface	013509	1	1	1
Fan Water Interlock	020425	1	1	1
Fault Logic A3	01-3906-02	1	1	1
Counter Interface PCA	01-4363-01	1	1	1
Display Counter LCD	2950-00005			1
Fuse 2A SloBlo	4300-00002			5
PS +/-24V	4000-00002		1	1
Extender Card	1700-00002		1	1
Gun Box				
Grid Drive PCA	01-5924-01	1	1	1
Grid Pulse Amp PCA	01-7131-01	1	1	1
Gun Curr. Sample & Hold PCA	01-6170-01	1	1	1
Gun Heater Xfmr	01-1875-01	1	1	1
Grid Pulse Xfmr	01-5074-01	1	1	1
Grid Bias PS	01-5073-01	1	1	1
Grid Bias PS PCA	01-5075-01	1	1	1
Grid Trigger Network PCA	01-6160-01	1	1	1
PWR SPLY 0-20 KV,0-1mA	4000-00003			1
Gun Filament PCA	01-4131-01	1	1	1
Grid Amp PCA	01-6168-01	1	1	1
Gun Interlock PCA	01-5958-01	1	1	1
Fuse 3A SloBlo	4300-00003			5
Rectifier Bridge 800v	4750-00008	1	1	1
Transorb 325v 6500a	014949	1	1	1
Cap, Elect 30uF 450V	1500-00112	2	2	2
Cap, Cer 0.47uF 600V	1500-00064	2	2	2
Dose Box				
Dose Count PCB	01-3910-01	1	1	1
P.S. Monitor PCA	01-7143-01	1	1	1
Dose Bias PS Assy	01-5767-01	1	1	1

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A		AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
Fuse 1A SloBlo	4300-00015				10
Magnetron Box					
Mag Fil Curr Mon PCA	01-4199-01	1		1	1
Mag Htr Xfmr 10V 20A	01-1849-01	1		1	1
Junction Box					
Water Flow Switch (display type)	5100-00020	1		1	1
SF6 Fitting	1000-00130	1		1	2
IFCC					
Dose Stif Board	010615	1		1	1
Transition Module	010817				1
Heat Exchanger					
Filter-Affinity 5"	019405	5		5	5
Screen Strainer	019406	5		5	5
TLS					
Power Supply 20c Detector	016940	1		1	2
Frame Grabber PCA—Squirel	019324	1		1	2
Silicon Grease	021734				2
Wavy Washers	021330	4		4	12
Rubber Washers	021735	4		4	12
IsoPost Assembly	018901				1
Isopost PCA	013418				1
TLS PC	020083				1
Video Card	019419		—	1	1
TLSCC	018283				1
X-ray Source Assy-60'cable	021242			1	1
HT Tank	016667		—	1	1
Generator Console	016669			1	1
HT Controller Board	020547				1
LF-RAC PCA	020548				1
Couch					
Electronics Tray	021923				1
Axum Pendant	020656	1		1	2
Pendant—non AXUM	020501	1			
AXUM Display	020657			1	1
Pendant Holder	020957				1
Encoder 40"	021924	1		1	1

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A	AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
Limit Switch	021927	1	1	1
Serial Connection Board	021921	—	1	1
Robot				
Kuka Cable Support (Tennis Raquet)	021127			1
KUKA PC	021215			1
KUKA PC CDROM	021732			1
KUKA PC HDD	021733	1	1	1
RDW Board	021729		1	1
DSE Board	021730		1	1
MFC2 Board	021731		1	1
Battery	021619	2	2	4
Fuse Kit	021620			2
SGI				
Tape Drive 4mm 20GB	017681	1	1	1
Hard Drive 73GB	020534		1	1
Front Panel LED	021737	1	1	1
ESCC				
ESCC Assy—AXUM	020575			1
Fuse 1A 3AG Fast Acting	014125			10
Fuse .25A 3AG Fast Acting	014124			10
Main Board PCA—AXUM	020477	1	1	1
ESCC/ISCC Interface	013510	1	1	1
Adapter Board	016122	1	1	1
Power Supply	018361			1
Synchrony				
Break out Box	020885			1
Synchrony PC	020082			1
Power Distribution Unit (PDU)				
LED Bulb, 120V, Amber	013580			5
Bulb, 60V, Incand, Clr	018540			5
Operator Console				
Operator Console	019183			1
Bulb, 24V, Incand, Clr t3 1/4	013590			10
LED Bulb, 24V, White	019196			2
Cables				
Gun HV Cable Assy	018370	1	1	1

PART DESCRIPTION	PART NO.	AGENT SPARE PARTS KIT A	AGENT SPARE PARTS KIT B	AGENT SPARE PARTS KIT C
Dose Cable	020015	1	1	1
CyRIS				
	TBD			
Miscellaneous				
Contact Block 2NO	013585		2	2
Keyswitch	010862		1	1
Pushbutton	013571		1	1
	Total Kit Prices:	**TBD**	**TBD**	**TBD**

QuickLinks

Exhibit 10.30

CYBERKNIFE® G4 PURCHASE AGREEMENT

Customer: ("*Customer*")	***Account Number:***
Contact Name:	***Quote ID:***
Address:	***Revision Number:***
	Revision Date:
RSD Contact:	***Expiration Date:***

Only valid for primary customer named above. This CyberKnife Purchase Agreement ("Agreement") is non-transferable and not for export outside the U.S.

CyberKnife® Robotic Radiosurgery System

A. Quote

	Part Description	Quantity	Unit Price	Line Total
1.	CyberKnife Robotic Radiosurgery System (See B Below)	1	$ 4,150,000.00	$ 4,150,000.00
2.	Additional Options Total (See C Below)			$ 0.00
3.	Special Promotion if this Agreement is signed by the Expiration Date. [However, should Customer, at any time prior to installation, decide not to purchase the InView Workstation or the MultiPlan Workstation, the additional discount will be cancelled.]			
4.	Special Q2 2007 RoboCouch™ Patient Positioning System Promotion if Customer Purchases the RoboCouch in Section C.1. below. [ONLY APPLIES IF ROBOCOUCH IS PURCHASED.]			($ 200,000.00)
			Total Due	**$ 3,950,000.00**

B. The Base CyberKnife System—G4 Configuration ***$4,150, 000.00***

1.	**Robotic Treatment Delivery System**	
1.1.	Image-Guidance System	
1.1.1.	Diagnostic X-ray sources	
1.1.2.	In-Floor Amorphous Silicon X-Ray Detectors	
1.2.	600 MU/minute Linear Accelerator (Linac) with secondary collimators	
1.3	Robotic Manipulator	
1.4	Axum® Treatment Couch & Automatic Patient Positioning System	
1.4.1.	Two (2) CT Overlay Kits included	
1.5	Treatment Delivery Control Console	
2.	**Treatment Planning System**	
2.1.	Two (2) MultiPlan™ Treatment Planning Workstations	
2.2.	CK Remote™ Open Architecture	
3.	**Clinical Application Modules**	
3.1.	Synchrony® Respiratory Tracking System	
3.2.	Xsight™ Spine Tracking System	
4.	**Data Management Systems**	
4.1.	Patient Archive and Restore System	

C. Additional Options

1. RoboCouch™ Patient Positioning System

Select RoboCouch Patient Positioning System by marking the box below.

o RoboCouch Patient Positioning System $800,000.00

When selecting RoboCouch Patient Positioning System, the Patient Treatment Couch (Section B.1.4) is removed from the Base CyberKnife System and replaced with the RoboCouch Patient Positioning System.

Patient Treatment Couch Credit ($350,000.00)

2. Additional MultiPlan™ Treatment Planning Workstation

Two MultiPlan Workstations are included with the Base CyberKnife System; however, additional MultiPlan Workstations may be purchased. Select additional MultiPlan Workstations by marking the box below.

o MultiPlan Workstation $125,000.00 each

Number of Additional MultiPlan Workstations: **MultiPlan Subtotal** $0.00

3. InView™ Workstation

Select InView Workstations by marking the box below.

o InView Workstation $45,000.00 each

Number of Additional InView Workstations: **InView Subtotal** $0.00

Additional Options Total $0.00

D. Pricing and Inclusions

1. Payment Terms:

1.1. $50,000 with the signed Letter of Intent between Accuray and the Customer ("LOI").
1.2. 30% of the total amounts specified herein ("Purchase Price") less $50,000 LOI-payment, due with the Agreement.
1.3. 60% of Purchase Price due upon delivery of the CyberKnife System (DATE.)
1.4. 10% of the Purchase Price due upon Acceptance (as defined in Section 7 of the Accuray Terms and Conditions set forth below in Section G).

2. Shipping Terms:

2.1. F.O.B. Destination.
2.2. Anticipated delivery scheduled for DATE.

3. Site Preparation and Installation:

3.1. Site preparation at Customer's expense.
3.2. Installation included at Accuray's expense.

4. Warranty:

4.1. 1-year warranty includes all parts and labor.

5. Training:

5.1. Training provided for up to 5 personnel (e.g. surgeon, radiation oncologist, physicist, radiation therapist). Hotel accommodations and travel costs are not included.
5.2. Additional attendees will be charged according to the then current training price list.

E. Contingencies

There are no contingencies.

F. Preventive Maintenance and Service Contracts

Accuray offers the below Preventive Maintenance and Service contracts ("*Service Contracts*"). The Service Contracts cover the Base CyberKnife System as described in Section B, up to 2 MultiPlan Workstations (including the 2 MultiPlan Workstations in the Base CyberKnife System), and up to 3 InView Workstations. If Customer has more than 2 MultiPlan Workstations installed (including the MultiPlan Workstations in the Base CyberKnife System) or more than 3 InView Workstations installed, then Customer shall pay an additional charge of $18,750.00 per year per MultiPlan Workstation and $6,750.00 per year per InView Workstation, as applicable. **Select one of the Service Contract options below by marking the box next to the service option desired.** The terms of Accuray's Preventive Maintenance and Service contracts, to be signed separately and invoiced separately by Accuray, apply to Accuray's provision of maintenance and support. If Customer does not execute a Preventive Maintenance and Service contract as of the date of this Agreement, it will not be entitled to any Upgrades released under Accuray's Diamond Elite Preventive Maintenance and Service contract between the date of this Agreement and the date Customer executes a Diamond Elite Service contract.

o Customer does not wish to select a Service Contract at this time. If Customer does not execute a Service contract as of the date of this Agreement, it will not be entitled to any Upgrades released under Accuray's Diamond Elite Preventive Maintenance and Service contract between the date of this Agreement and the date Customer executes a Diamond Elite Service contract.

o **Emerald Elite Service:** 4-year contract, no payments until after warranty year:

First Year (Warranty Year)	No Payment
Second Year	$275,000.00 per year
Third Year	$275,000.00 per year
Fourth Year	$275,000.00 per year
Fifth Year (optional)	$275,000.00 per year

☒ **Diamond Elite Service:** 4-year contract, no payments until after warranty year:

First Year (Warranty Year)	No Payment
Second Year	$460,000.00 per year
Third Year	$460,000.00 per year
Fourth Year	$460,000.00 per year
Fifth Year (optional)	$460,000.00 per year

Payment Terms: See Service Contracts, provided separately.

G. Accuray Terms and Conditions of Sale

1. Definitions; Terms. "*Accuray Products*" means all products manufactured by Accuray Incorporated ("*Accuray*") including, but not limited to, Accuray-produced hardware, software, and firmware. "*Accuray Services*" means services of Accuray related to the warranty provided herein, but shall not include any services relating to a Preventive Maintenance and Service Contract between Customer and Accuray, which shall be governed by the terms of such separate Preventive Maintenance and Service Contract. "*Accuray System*" means the CyberKnife System provided by Accuray to Customer hereunder, which includes component parts produced by other manufacturers. "*Accuray Update*" means any update offered by Accuray to any Accuray Product or Accuray System. "*Accuray Upgrade*" means any upgrade offered by Accuray to any Accuray Product or Accuray System. "*Specifications*" means the user manuals, reference guides, and configuration documentation provided by Accuray to Customer in writing, as updated from time to time by Accuray. All Accuray Products, Accuray Services, Accuray System, Accuray Upgrades and Accuray Updates (collectively, "*Accuray Deliverables*") are furnished only on the terms and conditions stated herein. Any different or additional terms contained in Customer's purchase order, Purchase Term Agreement or similar documents shall not bind Accuray.

2. Terms of Payment.

2.1. *Purchase Price; Payment Schedule.* The Purchase Prices for the Accuray Deliverables are as set forth in Section A above. Purchase Prices are valid only for the item on which such prices are specified. The Purchase Prices are exclusive of all taxes (including, but not limited to, any sales tax, use tax, or value- added tax or other similar tax), license fees, customs fees, duties, and similar charges. Customer shall pay for the Accuray Deliverables in accordance with the payment schedule set forth in Section D above and the terms of this Section 2, provided that if installation or Acceptance (as defined in Section 7) is delayed by Customer for reasons not attributable to Accuray, the payment amount due upon Acceptance of the applicable Accuray Deliverable shall be due and payable the earlier of (i) 60 calendar days after delivery or (ii) Acceptance. If the delivery of an Accuray Deliverable is delayed by Customer for reasons not attributable to Accuray, Customer shall pay Accuray's reasonable cost to store such deliverable (including, but not limited to, insurance and demurrage charges) and amounts due on the estimated delivery date specified in Section D above for such deliverable shall become due and payable on such date. Accuray's performance hereunder is subject to Accuray's approval of Customer's credit.

2.2. *învoices; Late Payments.* If Customer's internal payment processing procedure requires Customer to receive an invoice before paying amounts due hereunder, Customer shall request such invoice sufficiently in advance to make the payment in accordance with the payment schedule set forth in Section D above. Past due balances shall bear interest at the rate of 1% per month or, if lower, the maximum amount permitted by applicable law. Accuray may suspend its performance under this Agreement if payments are not made in accordance with the payment schedule set forth in Section D above. Customer shall pay Accuray's reasonable costs of collecting amounts due hereunder that are more than 30 days past due.

2.3. *Security Interest.* Until the Purchase Price is paid in full to Accuray, Accuray shall have a security interest in all Accuray Deliverables and proceeds generated therefrom, for the purpose of securing payment for such deliverables. Customer authorizes Accuray to file, and shall execute upon Accuray's request, documents and related filings and recordings thereof as necessary for Accuray to perfect the foregoing security interest under the Uniform Commercial Code or any similar domestic or foreign laws. Customer shall maintain the Accuray Deliverables in good condition and keep such deliverables free of any liens until payment is made in full. All security interests shall be released once Accuray has received all payments owed hereunder for all Accuray Deliverables.

3. Shipment. Shipments are F.O.B. Destination. Customer shall inspect arriving shipments and report any visible damage or shortages to Accuray within 48 hours after delivery and any concealed damage within 10 days after delivery. If Customer does not report damage in accordance with the previous sentence, Customer shall bear the risk of loss with respect to such damage. For shipments outside the United States, Customer shall procure all necessary permits and licenses for such shipments and for compliance with any government regulations applicable at the destination. Delivery and installation dates set forth in Section D above, or otherwise agreed upon in writing by the parties are approximate. Accuray shall use reasonable efforts to meet all such delivery and installation dates but shall not be liable for delays.

4. Installation.

4.1. *Installation by Accuray.* Accuray will notify Customer approximately 90 calendar days prior to the scheduled delivery of the Accuray System to coordinate installation details. Installation will be performed by Accuray. Accuray will assemble and test the Accuray System. Operation of the Accuray System by Accuray, as necessary for completion of installation or acceptance tests, is subject to Customer providing adequate radiation shielding protection and other site preparations required for the safety and protection of personnel and the Accuray Deliverables. Upon completion of the installation, Accuray's representatives will demonstrate proper machine operation by performing Accuray's acceptance test procedure. For clarity, Accuray is not responsible for any commissioning of the Accuray System, including, but not limited to, any calibration or radiation surveys. Such commissioning shall be the sole responsibility of Customer.

4.2. *Site Preparation.* Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, and access to the room completed on the estimated delivery date and ready for installation of the Accuray System. Accuray will have no responsibility for any matter affecting or related to the adequacy of architectural design, utility service design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers and other safety devices must be approved by an expert in the radiation field and shall be Customer's responsibility.

4.3. *Rigging and Unloading.* Accuray will locate and contract with a rigger or local licensed contractor to provide labor and rigging services necessary to unload the sub-base frame and the rest of the Accuray System from the transport vehicle and move the entire Accuray System to its final position under Accuray's supervision. Accuray shall be responsible for all standard rigging costs and expenses. An Accuray representative will monitor the movement, final positioning and connection of the Accuray System.

4.4. *Customer Representative.* Customer shall provide a representative who shall be present at all times during the installation and be capable of assisting where necessary. When no representative is present and assistance from Customer is not available when required, Accuray may suspend the installation until an appropriate Customer representative is made available consistently.

4.5. *Site Location.* Customer agrees that the Accuray System will remain at the site at which Accuray installs the System and will not be re-located without the prior written consent of Accuray, such consent to not be unreasonably withheld.

5. Training.

5.1. *Training.* Accuray will provide training for up to 5 Customer personnel (such personnel, collectively, the "*Initial Group*"). The Accuray training includes: (i) Technical Training, (ii) 1 Clinical Site Visit, and (iii) 1 on-site training session on the technical use of the Accuray System during first patient treatment, as each is described below. Customer shall be responsible for the travel and living expenses of all personnel sent for training. At the request of Customer, Accuray shall train additional Customer personnel beyond the Initial Group in accordance with Accuray's then current training price list and availability.

5.2. *Training Framework and Restrictions.* Due to logistical considerations, Accuray can only offer 1 Clinical Site Visit and 1 on-site training session during first patient treatment per Customer. As set forth below, Customer shall at a minimum send a Core Group (as defined in Section 5.3.1 below) for Technical Training prior to installation. However, because completion of the Technical Training is a prerequisite to the Clinical Site Visit and because completion of Technical Training and the Clinical Site Visit are prerequisites to the on-site training session during first patient treatment, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training before the Clinical Site Visit. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then only Customer's Core Group personnel who have completed the Technical Training shall be able to participate in the Clinical Site Visit and subsequent on-site training session during first patient treatment. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then the remaining members of Customer's Initial Group shall only be eligible for Technical Training and must complete such Technical Training within 60 days of the first patient treatment or the option for such Technical Training shall be deemed waived by Customer.

5.3. *Technical Training*

5.3.1. Technical Training will occur at Accuray's training facility in Sunnyvale, California or such other regional training facility as Accuray may establish. At a minimum, Customer must include the following individuals in the first group that Customer sends to Technical Training:

(i) at least 1 medical physicist or the individual who will be responsible for commissioning the Accuray System and performing the quality assurance testing and treatment planning at Customer's site if such individual is not a physicist; and

(ii) at least 1 radiation oncologist or the individual who will be responsible for approving the prescription at Customer's site if such individual is not a radiation oncologist (such individuals, collectively, the "Core Group").

5.3.2. At a minimum, the Core Group must have completed the Technical Training prior to installation. Customer, in its discretion, may select the remaining members of Customer's Initial Group (for example, surgeons, specialists, radiation therapists and additional medical physicists and/or radiation oncologists), however, as described in Section 5.2 above, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training prior to the Clinical Site Visit.

5.4. *Clinical Site Visit.* Accuray will arrange for 1 Clinical Site Visit for Customer's Initial Group prior to installation. The Clinical Site Visit will take place at an operating CyberKnife Center in the United States. This Clinical Site Visit will involve clinical interaction with personnel at such center and an opportunity to witness actual patient treatment. Accuray will provide each customer with only 1 Clinical Site Visit and thus any members of Customer's Initial Group who wish to attend a Clinical Site Visit must all attend the same Clinical Site Visit. Completion of Technical Training is a prerequisite to participation in the Clinical Site Visit.

5.5. *On-site Training during First Patient Treatment.* Accuray shall provide an Accuray trainer to assist with the technical use of the Accuray System at Customer's site during first patient treatment. For clarity, proctoring and credentialing of physicians and medical staff is the responsibility of the Customer and should be performed separately from Accuray training according to the policies and procedures of the particular Customer or affiliated hospital, as applicable. Completion of the Technical Training and Clinical Site Visit by, at a minimum, the Core Group of Customer personnel are prerequisites for Accuray providing a trainer during the first patient treatment at Customer's site. Accuray shall have the right to reschedule the first patient treatment in the event that Customer's Core Group has not completed the Technical Training and the Clinical Site Visit prior to the first patient treatment. In addition, at the first patient treatment the Accuray trainer will only work with Customer personnel who have previously completed both Accuray's Technical Training and Clinical Site Visit.

5.6. *Credentials.* Customer shall determine and verify any necessary credentials of any personnel that Customer sends for training on the Accuray System. Accuray shall not be responsible for and will not in any way determine, assess or verify any necessary credentials of any personnel that Customer sends for training on the Accuray System.

5.7. *Qualification.* Accuray strongly recommends that any Customer personnel who will be involved with the Accuray System attend the training programs offered by Accuray, however, Customer shall have the sole responsibility for ensuring that any Customer personnel are appropriately trained with respect to any Accuray Deliverables and Accuray shall not be responsible for any such determinations.

6. Calibration and Local Requirements.

6.1. *Calibration.* Customer shall be solely responsible for all Accuray System commissioning and calibration. The dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Accuray System for patient treatment. Customer shall be responsible for quality assurance testing and calibrating the Accuray System regularly. Customer also shall be responsible for radiation surveys which may be required by applicable law or regulation or which may be necessary to establish that radiation does not exceed safe levels. Accuray has no responsibility for any such commissioning, quality assurance testing, calibration or radiation surveys.

6.2. *Pre-Requisite to First Patient Treatment.* Proper commissioning, calibration and quality assurance testing ("QA") of the Accuray System are necessary prerequisites to the first patient treatment. Accuray has the right to delay the first patient treatment in the event that Customer, in Accuray's sole opinion, does not have sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Accuray System.

6.3. *Local Requirements.* Customer shall be responsible for obtaining all permits and for meeting all requirements relating to state and local codes, registration, regulations and ordinances applicable to Customer's use of the Accuray System. Accuray has no responsibility for compliance by the Accuray Deliverables with such requirements.

7. Acceptance. "*Acceptance*" of the Accuray System shall occur upon the earlier of (i) completion by Accuray of its acceptance test procedure that demonstrates that the Accuray System substantially conforms to the Specifications or (ii) execution of Accuray's acceptance form by Customer. In no event shall Customer or its agents use the Accuray System (or any portion thereof) for any purpose before Acceptance thereof without the express written approval of Accuray. Customer shall indemnify and hold Accuray harmless from any such use.

8. Intellectual Property Rights Indemnity.

8.1. *Indemnity.* Accuray shall at its expense defend any action brought against Customer with respect to a claim by a third party that the design or manufacture of any Accuray Deliverable infringes any valid patent or other intellectual property right of the United States, and shall pay any damages awarded by a court arising from such claim, provided Customer gives Accuray prompt written notice of such claim and full authority, information and assistance in settling or defending such claim.

8.2. *Certain Remedies.* If a court judgment prohibits Customer's continued use of any Accuray Deliverable, or if at any time Accuray determines that any Accuray Deliverable may become subject to a cause of action for infringement, Accuray may at its expense either (i) procure a license to enable Customer to continue using such Accuracy Deliverable, (ii) replace such Accuray Deliverable with a non-infringing Accuray Deliverable, or (iii) remove such Accuray Deliverable and refund a pro-rated portion of the Purchase Price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance (i.e., removal of the Accuray Deliverable at the end of the first year after Acceptance would result in a refund of 80% of the Purchase Price). Accuray shall have no liability hereunder with respect to any claims settled by Customer without Accuray's prior written consent.

8.3. *Exclusion.* Accuray excludes from any liability hereunder, and Customer shall indemnify and hold Accuray harmless from and against any expense, loss or liability resulting from claimed infringement of any third party intellectual property rights: (i) arising from the use of an Accuray Deliverable other than in accordance with the Specifications, (ii) based on the combination of equipment, processes, programming applications or materials not furnished by Accuray with the Accuray Deliverables, (iii) arising out of compliance by Accuray with Customer's designs, specifications or instructions, or (iv) damages incurred as a result of Customer's continued use of an Accuray Deliverable after Accuray has recommended in writing that Customer suspend such use. This Section 8 states Accuray's entire liability for any claim based upon or related to any alleged infringement by an Accuray Deliverable of intellectual property right.

9. Warranty.

9.1. *Warranty.* Accuray warrants that (i) the hardware components of the Accuray Deliverables will be free from defects in material and workmanship and (ii) the hardware and software

components of the Accuray Deliverables will operate substantially in accordance with the Specifications, in each case for a period of 1 year from the date of Acceptance, but not to exceed 2 years from date of delivery ("*Warranty Period*"). Any service with respect to Accuray Deliverables provided by Accuray after the Warranty Period shall be provided in accordance with the terms of a Service Contract executed by the parties.

9.2. *Warranty Remedy.* If Customer notifies Accuray during the Warranty Period of a defect in an Accuray Deliverable that causes such deliverable to fail to conform to the foregoing warranty, Accuray shall at its option either repair or replace the defective deliverable, or, if in Accuray's opinion such repair or replacement is not commercially reasonable, Accuray shall refund a pro-rated portion of the price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance. This Section 9.2 sets forth Customer's sole and exclusive remedies with respect to a breach of the warranty specified in Section 9.1.

9.3. *Conservation of Materials.* In the interest of conservation of scarce materials, and of efficient utilization of high value parts, the Accuray Deliverables may contain re-manufactured parts. Such parts are subject to the same standards of quality control applied to other parts and are covered by the warranty in this Section 9.

9.4. *Scope of Warranty.* The warranty services described in this Section 9 shall not apply to defects or non-conformities caused by: (i) abuse, accident, misuse or neglect of an Accuray Deliverable; (ii) modification of an Accuray Deliverable (including any software therein) without Accuray's express written authorization; (iii) use in an operating environment other than the operating environment described in the Specifications; or (iv) any component of an Accuray Deliverable that has been superseded by a update made available to Customer without charge by Accuray. In-warranty repair or replaced parts are warranted only for the unexpired portion of the original warranty period.

9.5. *OTHER WARRANTIES.* EXCEPT AS SET FORTH IN THIS SECTION 9, ACCURAY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

10. **Mutual Indemnity.** If it is determined by a court in accordance with applicable law that the negligence of a party (the "*Responsible Party*"), its employees or agents causes damage or injury to a third party, the Responsible Party shall pay the other party for any damages awarded by a court or agreed to by the Responsible Party in a settlement arising from such claims to the extent such damages reflect the Responsible Party's relative fault therefor. Notwithstanding the foregoing, Accuray shall have no responsibility whatsoever for, and Customer shall indemnify and hold Accuray harmless from, all damage or injury to third parties which (i) results from the use, operation or service of any Accuray Deliverable by other than Accuray personnel prior to Acceptance and completion of the radiation survey by Customer, (ii) results from or relates to any use, operation or service of any Accuray Deliverable by a party not authorized to perform such service by Accuray, or (iii) any use by Customer or its agents of an Accuray Deliverable contrary to any written warning or instruction given by Accuray to Customer.

11. **Damages.** IN NO EVENT SHALL ACCURAY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCURAY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE PAYMENT RECEIVED BY ACCURAY FOR THE ACCURAY DELIVERABLE RESULTING IN THE LOSS OR DAMAGE CLAIMED.

12. **Intellectual Property Ownership and License.** Accuray and its licensors retain all intellectual property rights in the Accuray Deliverables. Accuray hereby grants Customer a nonexclusive, non-transferable, royalty-free right to use the software provided in connection with the Accuray Deliverables only in machine readable form and only in combination with the Accuray Deliverable with which such software is provided. No such software shall be copied or decompiled in whole or in part by Customer, and Customer shall not disclose or provide any such software, or any portion thereof, to any third party. All rights in intellectual property not expressly granted hereunder are reserved by the owner of such intellectual property.

13. **Trademarks.** Accuray is the owner of the trademark CyberKnife® and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

14. **Confidentiality.** All drawings, designs, specifications, manuals and software and other non-public information furnished to the Customer by Accuray hereunder shall remain the confidential and proprietary property of Accuray ("*Confidential Information*"). All such information, except as may be found in the public domain, shall be held in confidence by Customer and shall not be disclosed by Customer to any third parties or used by Customer other than in its operation of the Accuray Deliverables in accordance with the Specifications.

15. **Patient Information.**

15.1. *Compliance with HIPAA.* In performing any services hereunder, Accuray may receive from Customer patient healthcare, billing, or other confidential patient information ("*Patient Information*"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Customer shall identify to Accuray in writing all such information when Customer provides such information to Accuray, and Accuray shall use Patient Information so identified by Customer only as necessary to provide the services to Customer as set forth herein. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*").

15.2. *De-Identified Information.* Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray shall have all identifying patient information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

16. **Cancellations.** All payments made hereunder are non-refundable and no order accepted by Accuray may be canceled by Customer without Accuray's prior written consent. If Customer requests cancellation of any order and Accuray consents to such request, Customer agrees to pay Accuray a charge determined by Accuray to cover the reasonable costs of order processing, handling, re-testing, shipping, storage, repackaging and similar activities incurred by Accuray in connection with such cancellation.

17. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement without Customer's consent to an affiliate and either party may assign this Agreement without the other party's consent to a successor or

acquirer in connection with a merger or acquisition, or the sale of all or substantially all of such party's assets or the sale of that portion of such party's business to which this Agreement relates, upon written notice; provided that any party to which Customer proposes assigning this Agreement must meet Accuray's standard creditworthiness requirements. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. Any attempted assignment in violation of this Section 17 shall be null and void.

18. **Dispute Resolution.** Any dispute between Accuray and Customer arising from or related to this Agreement, excluding disputes regarding payment or Customer's unauthorized use or disclosure of Accuray Confidential Information or intellectual property, shall be settled as follows. The party initiating the dispute shall provide written notification to the other party identifying in detail the nature of the dispute. The other party shall respond in writing to the notification within 30 calendar days from the date of receipt of the notification. The party initiating the dispute shall have an additional 30 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved within the foregoing 30-day period, the parties shall escalate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. If the dispute is not resolved within 15 calendar days after escalation to the President and Chief Executive Officer as described above, then either party may pursue resolution by any means available at law or equity.

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

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 Copy to: General Counsel	

20. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, acts of God, accident, failure or breakdown of components necessary for order completion; subcontractor or supplier caused delays; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

21. **Governing Law.** The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the United States and the State of California without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction. No action, regardless of form, arising out of or related to any Accuray Deliverable may be brought by Customer more than 1 year after Customer has or should have become aware of the cause of action.

22. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

23. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

24. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

25. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

26. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. In the event of a conflict or inconsistency between the terms stated in a purchase order or other similar document and this Agreement, the terms of this Agreement shall govern.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, thereunto duly authorized. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By: _____	By: _____
Print Name: Robert E. McNamara	Print Name: _____
Title: Senior Vice President & Chief Financial Officer	Title: _____
Date: _____	Date: _____

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

By: _____
Darren J. Milliken
General Counsel

Date: _____

Please make sure that you have selected a Service Contract (Emerald Elite or Diamond Elite, Section F above). A separate Service Contract is provided for your signature.

Please attach payment to this signed Agreement and forward to:

Accuray Incorporated
ATTN: Contracts Administration
1310 Chesapeake Terrace
Sunnyvale, CA 94089
T. 408.716.4600
F. 408.716.4620

QuickLinks

CYBERKNIFE® G4 PURCHASE AGREEMENT

Exhibit 10.31

Accuray™ CyberKnife® Diamond Elite Service Agreement

1. *Scope of Service*. This Diamond Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date*. This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades that have a list price of greater than $200,000 per Upgrade are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades that have a higher list price, as more than a single Upgrade to Customers under this Agreement. If Accuray offers Upgrades that have a higher list

price as more than a single Upgrade then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The "Agreement Term" shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The "Agreement Price" shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) Multiplan Workstations (including the MultiPlan Workstations in the Base CyberKnife System), and up to three (3) InView Workstations. If Customer has more than two (2) MultiPlan Workstations or three (3) InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- ANNUAL: $460,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- QUARTERLY: $120,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- MONTHLY: $41,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades, when and if available in years 2, 3, and 4, up to two (2) Upgrades per year. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades and that there may be some years in which no Upgrades will be offered; however, in contrast, there may be years in which Accuray will offer multiple Upgrades and Customer may select up to two (2) of such Upgrades. Customer may receive an available Upgrade during Year 1 (the Warranty Year), or receive an additional Upgrade during years 2 or 3, and such Upgrade will replace

Customer's opportunity for Upgrades in future years. For example, if Customer orders an Upgrade during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades when and if they become available during years 2, 3 and 4. Upgrades may be software, hardware, or a combination thereof.

3.3. Customer will be notified of all available Upgrades, and may select which Upgrades they wish to obtain. In order to receive the desired Upgrades under this Agreement, Customer must submit a signed order for the Upgrade. If such Upgrade is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades may have development costs and/or a list price such that for Accuray to offer that particular Upgrade under this Diamond Program would require such Upgrade to be offered to Customer as more than a single Upgrade. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade would be offered as more than a single Upgrade. The installation of the Upgrades will be scheduled once the Upgrade is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Diamond coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Diamond coverage on the following terms. The terms of the Optional Year 5 will be the same as the previous Agreement years, with the following differences: If the Agreement is cancelled during the Optional Year 5, Customer will receive a refund calculated on a pro rata basis for the remaining portion of the year that has been paid for, taking into account whether Customer has accepted any Upgrade(s) during that year as set forth below in Section 10 (Cancellation). If any amount is due for the portion of Optional Year 5 that the Diamond coverage was in effect, Customer will pay for the balance owed.

3.5. Installation of Upgrades will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade.

4.2. During the Agreement Term, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 (Notices) of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or Preventive Maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local time Monday through Saturday (excluding Federal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.1.1. Service Levels

6.1.1.1. Level A:

6.1.1.1.1. System is down and Customer is unable to treat patients.

6.1.1.1.2. On-site support within 24 hours.

6.1.1.2. Level B:

6.1.1.2.1. System is functioning, Customer is able to treat patients, but with some limitations or interruptions when treating patients.

6.1.1.2.2. On-site support within 72 hours.

6.1.1.3. Level C:

6.1.1.3.1. System is functioning, Customer is able to treat patients, but with minor inconveniences or observations that require further investigation.

6.1.1.3.2. On-site support as soon as practical, but not later than next Preventive Maintenance visit.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-877-668-8667, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System Preventive Maintenance as prescribed in the current System maintenance manuals. Preventive Maintenance will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or Preventive Maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee*. Accuray will guarantee that the System shall have an Uptime percentage of at least 98% of normal treatment hours on an annual basis during the Agreement Term. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding Federal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation*. Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled Preventive Maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports*. Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee*. For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 98%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 98%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *Cancellation.* Customer shall have the right to cancel and terminate this Agreement, with or without cause, at any time upon thirty (30) days' prior written notice to Accuray. There shall be no penalty for such cancellation and termination. Notwithstanding the foregoing, if Customer has ordered an Upgrade(s) in that year, and the payments made for that year at the time of

cancellation are less than the then current list price of the Upgrade(s) ordered, after subtracting the pro rated price for service from any payments made, Customer will be responsible for the difference between the amount actually paid and the list price of the Upgrade(s). Additionally, if Customer has ordered an Upgrade in advance against Customer's opportunity for an Upgrade in a later year, then Customer shall pay the then current list price for the Upgrade that was ordered in advance. Should Customer not pay, then Accuray will remove said Upgrade, if applicable.

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.*

13.1. In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

13.2. Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray in connection with this Agreement shall have all identifying patient

information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers and health plan numbers, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 with cc to: General Counsel	

17. *Trademarks.* Accuray is the owner of the trademark CyberKnife®, and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

18. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

19. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

20. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

21. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

22. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

23. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth below by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:
	PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

QuickLinks

Accuray™ CyberKnife® Diamond Elite Service Agreement

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.32

ACCURAY CYBERKNIFE® EMERALD ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Emerald Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. *Definitions*:

1.2.1. *Bug Fix.* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update.* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade.* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades of the software.

1.2.4. *New Version/New Product.* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Consumables.* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term.* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5"). Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Emerald coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Emerald coverage on same terms as the previous Agreement years. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price.* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- o ANNUAL: $275,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: $72,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: $25,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment To Be Covered.*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates).*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade.

4.2. Customer is not entitled to any Upgrades or New Versions/New Products under this Agreement. Customer may purchase Upgrades and New Versions/New Products separately, and such Upgrades or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the Agreement Term, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing.*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 (Notices) of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or Preventive Maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period.*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local time Monday through Saturday (excluding Federal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.1.1. Service Levels

6.1.1.1. Level A:

6.1.1.1.1. System is down and Customer is unable to treat patients.

6.1.1.1.2. On-site support within 24 hours.

6.1.1.2. Level B:

6.1.1.2.1. System is functioning, Customer is able to treat patients, but with some limitations or interruptions when treating patients.

6.1.1.2.2. On-site support within 72 hours.

6.1.1.3. Level C:

6.1.1.3.1. System is functioning, Customer is able to treat patients, but with minor inconveniences or observations that require further investigation.

6.1.1.3.2. On-site support as soon as practical, but not later than next Preventive Maintenance visit.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-877-668-8667, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System Preventive Maintenance as prescribed in the current System maintenance manuals. Preventive Maintenance will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or Preventive Maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime.*

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Agreement Term. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for

treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled Preventive Maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 98%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 98%.

8. *Replacement Parts.*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions.*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *Cancellation.* Customer shall have the right to cancel and terminate this Agreement, with or without cause, at any time upon thirty (30) days' prior written notice to Accuray. There shall be no penalty for such cancellation and termination.

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty.*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.*

13.1. In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

13.2. Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray in connection with this Agreement shall have all identifying patient

information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers and health plan numbers, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws.*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

17. *Trademarks.* Accuray is the owner of the trademark CyberKnife®, and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

18. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

19. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

20. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

21. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

22. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

23. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth below by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

QuickLinks

ACCURAY CYBERKNIFE® EMERALD ELITE SERVICE AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.33

ACCURAY CYBERKNIFE® EMERALD BASIC SERVICE AGREEMENT

1. *Scope of Service*. This Emerald Basic Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. *Definitions*:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term.* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5"). Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Emerald Basic coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Emerald Basic coverage on same terms as the previous Agreement years. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price.* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- o ANNUAL: $220,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: $53,250 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: $18,750 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment To Be Covered.*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates).*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade.

4.2. Customer is not entitled to any Upgrades or New Versions/New Products under this Agreement. Customer may purchase Upgrades and New Versions/New Products separately, and such Upgrades or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the Agreement Term, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing.*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 (Notices) of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or Preventive Maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period.*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 5:00 PM local time Monday through Saturday (excluding Federal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within two (2) hours of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.1.1. Service Levels

6.1.1.1. Level A:

6.1.1.1.1. System is down and Customer is unable to treat patients.

6.1.1.1.2. On-site support within 24 hours.

6.1.1.2. Level B:

6.1.1.2.1. System is functioning, Customer is able to treat patients, but with some limitations or interruptions when treating patients.

6.1.1.2.2. On-site support within 72 hours.

6.1.1.3. Level C:

6.1.1.3.1. System is functioning, Customer is able to treat patients, but with minor inconveniences or observations that require further investigation.

6.1.1.3.2. On-site support as soon as practical, but not later than next Preventive Maintenance visit.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-877-668-8667, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System Preventive Maintenance as prescribed in the current System maintenance manuals. Preventive Maintenance will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or Preventive Maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 98% of normal treatment hours on an annual basis during the Agreement Term. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for

treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled Preventive Maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts.*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts. THE FOLLOWING PARTS ARE NOT COVERED BY THIS SERVICE AGREEMENT, AND WILL BE BILLED AT LIST PRICE IF THEY SHOULD REQUIRE REPLACEMENT: MAGNETRON; POSITIONING X-RAY SOURCES; AMORPHOUS SILICON DETECTORS; AND WAVEGUIDE.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions.*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

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Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

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11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

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12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

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13.1. In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable

provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

13.2. Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray in connection with this Agreement shall have all identifying patient information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers and health plan numbers, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

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15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be

sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 with cc to: General Counsel	

17. *Trademarks.* Accuray is the owner of the trademark CyberKnife®, and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

18. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

19. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

20. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

21. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

22. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

23. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth below by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

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ACCURAY CYBERKNIFE® EMERALD BASIC SERVICE AGREEMENT

Exhibit 10.34

ACCURAY CYBERKNIFE® INTERNATIONAL RUBY ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Ruby Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.*This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software containing major new features, functionality and/or performance improvements that would enable the existing software configuration to perform to the level of the next version of the software configuration and designed to replace the older software version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions*Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades/Enhancements that have a higher list price, as more than a single Upgrade/Enhancement to Customers under this Agreement. If Accuray offers Upgrades/Enhancements that have a higher list price as

more than a single Upgrade/Enhancement then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- ANNUAL: $380,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- QUARTERLY: $98,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- MONTHLY: $34,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which Accuray will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/

Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Any hardware enhancements offered by Accuray will be quoted and sold separately from the software Upgrades/Enhancements provided for in this Agreement.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Accuray to offer that particular Upgrade/Enhancement under this Ruby Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Ruby coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Ruby coverage on same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or

preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or

material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation.* Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN

CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with

return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

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ACCURAY CYBERKNIFE® INTERNATIONAL RUBY ELITE SERVICE AGREEMENT

Exhibit 10.35

ACCURAY CYBERKNIFE® INTERNATIONAL DIAMOND ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Diamond Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* Upgrades/Enhancements that have a list price of greater than $200,000 per Upgrade/Enhancement are specifically excluded from this Agreement. However, Accuray may at its discretion, offer Upgrades/Enhancements that have a higher list

price, as more than a single Upgrade/Enhancement to Customers under this Agreement. If Accuray offers Upgrades/Enhancements that have a higher list price as more than a single Upgrade/Enhancement then Accuray will make such offer to all of its customers. Examples of such components that would likely fall into this category are: the robot, and the patient couch. New Versions and New Products are also specifically excluded.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- ANNUAL: $460,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- QUARTERLY: $120,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- MONTHLY: $41,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Under this Agreement, Customer may receive Upgrades/Enhancements, when and if available in years 2, 3, and 4, up to two (2) Upgrades/Enhancements per year. Customer acknowledges and agrees that this in no way obligates Accuray to provide a minimum number of Upgrades/Enhancements and that there may be some years in which no Upgrades/Enhancements will be offered; however, in contrast, there may be years in which

Accuray will offer multiple Upgrades/Enhancements and Customer may select up to two (2) of such Upgrades/Enhancements. Customer may receive an available Upgrade/Enhancement during Year 1 (the Warranty Year), or receive an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will replace Customer's opportunity for Upgrades/Enhancements in future years. For example, if Customer orders an Upgrade/Enhancement during Year 1 (the Warranty Year), Customer will have the opportunity for up to five (5) Upgrades/Enhancements when and if they become available during years 2, 3 and 4. Upgrades/Enhancements may be software, hardware or a combination thereof.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on the System. Some Upgrades/Enhancements may have development costs and/or a list price such that for Accuray to offer that particular Upgrade/Enhancement under this Diamond Program would require such Upgrade/Enhancement to be offered to Customer as more than a single Upgrade/Enhancement. Accuray will notify Customer in writing upon commercial launch if a particular Upgrade/Enhancement would be offered as more than a single Upgrade/Enhancement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, Customer may receive up to two (2) additional Upgrades/Enhancements when and if available during Optional Year 5. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Diamond coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Diamond coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime*. Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and

regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation.* Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO

EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

QuickLinks

ACCURAY CYBERKNIFE® INTERNATIONAL DIAMOND ELITE SERVICE AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.36

ACCURAY CYBERKNIFE® INTERNATIONAL EMERALD ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Emerald Elite Service Agreement ("Agreement") is made by and between ACCURAY INCORPORATED ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (User Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2006 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. *Definitions*:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The *Agreement Term* shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5"). Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to ten (10) days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Emerald coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Emerald coverage on same terms as the previous Agreement years. Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The *Agreement Price* shall be one of the following, at Customer's option (indicate preferred option by checking a box, if no selection is made Customer will be billed on an annual basis). The Agreement Price shall cover the Base CyberKnife System, up to two (2) CyRIS Multiplan Systems (including the CyRIS MultiPlan System in the Base CyberKnife System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems or three (3) CyRIS InView Workstations installed, then an additional charge of $18,750.00 per year per MultiPlan and $6,750.00 per year per InView, as applicable, will be added by Accuray to the Agreement Price set forth below.

- o ANNUAL: $275,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o QUARTERLY: $72,000 per quarter, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o MONTHLY: $25,000 per month, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment To Be Covered*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of the Agreement Term, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased separately by Customer from Accuray or taken under this Agreement as a System Upgrade/Enhancement.

4.2. Customer is not entitled to any Upgrades/Enhancements or New Versions/New Products under this Agreement. Customer may purchase Upgrades/Enhancements and New Versions/New Products separately, and such Upgrades/Enhancements or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 16 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. In the event that the service issue cannot be resolved by telephone or other remote response, then Accuray will respond on-site. On-site response times will vary depending upon the level of service required.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such modification would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock with Accuray's regional service engineers all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially

reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *No Cancellation.* Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under bankruptcy or equivalent laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative

fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, DOWNTIME OR THE USE OR PERFORMANCE OF THE ACCURAY SYSTEM, ACCURAY PRODUCTS, ACCURAY UPDATES OR ACCURAY UPGRADES.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara

County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name: Doug Keare	Print Name:
Title: Vice President of Customer Service and Technical Support	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

SIGNATURE PAGE TO INTERNATIONAL EMERALD SERVICE AGREEMENT

QuickLinks

ACCURAY CYBERKNIFE® INTERNATIONAL EMERALD ELITE SERVICE AGREEMENT

Exhibit 10.37

ACCURAY CYBERKNIFE® PLATINUM ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Platinum Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (user Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* means items that are excluded from the definition of Upgrade/Enhancement because of the very nature of the item, as compared to the rest of the components in the system whether in the software and/or hardware configuration, it

would cost, in Accuray's sole opinion, more than the average current list price of an Upgrade/Enhancement to an existing product to implement. Examples of such components that are made up of software and/or hardware components that would likely fall into this category are: the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade/Enhancement, and such items may be offered as an Update/Enhancement at Accuray's sole discretion.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The Agreement shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") at the price of $425,000 and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The Agreement price shall be one of the following, at Customer's option (indicate preferred option):

- o $425,000 per year, paid yearly in advance, for years 2, 3, 4 & Optional Year 5.
- o $110,000 quarterly, paid at the beginning of each quarter, for years 2, 3, 4 & Optional Year 5.
- o $37,000 monthly, paid at the beginning of each month, for years 2, 3, 4 & Optional Year 5.

3. *Product Upgrades/Enhancements*

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Accuray's total commitment under the initial four (4) year Agreement is to deliver six (6) Upgrades/Enhancements as follows. No Upgrades/Enhancements will be due under this Agreement during Year 1 (the Warranty Year). For each of the subsequent three (3) years, Customer is entitled to two (2) Upgrades/Enhancements in each year, such that Customer will receive two (2) Upgrades/Enhancements during each of years 2, 3 and 4. Customer may order an available Upgrade/Enhancement during Year 1 (the Warranty Year), or order an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will be charged against any future Upgrades/Enhancements due Customer under this Agreement. For example, if Customer orders an Upgrade/Enhancement during Year 1

(the Warranty Year), Customer is entitled to only five (5) subsequent Upgrades/Enhancements under this Agreement during years 2, 3 and 4.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on their system. Any Upgrades/Enhancements ordered will count against the total of six (6) Upgrades/Enhancements that Customer is entitled to under this Agreement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, two (2) additional Upgrades/Enhancements will be made available. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to 10 days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Platinum coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Platinum coverage on the following terms. The terms of the Optional Year 5 will be the same as the previous Agreement years, with the following differences: If the Agreement is cancelled during the Optional Year 5, Customer will receive a refund calculated on a pro rata basis for the remaining portion of the year that has been paid for, taking into account whether Customer has accepted any Upgrade(s)/(Enhancement(s) during that year as set forth below in Section 10. If any amount is due for the portion of Optional Year 5 that the Platinum coverage was in effect, Customer will pay for the balance owed.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

3.6. Accuray agrees to use reasonable efforts to complete during each year (following the Warranty Year) of this Agreement, and agrees, upon commercial availability and receipt of a signed order from Customer, to include on Customer's System two (2) Upgrades/Enhancements.

3.7. If Accuray is unable to offer an Upgrade/Enhancement in any Agreement year, not including Year 1 (the Warranty Year), Accuray will credit Customer $100,000 for each Upgrade/Enhancement for each year it is unable to offer an Upgrade/Enhancement. Such credit will be applied against future service charges, such as the next year's payment under this Agreement, or, in the event that Customer does not renew the Agreement after year 4, monies owed will be refunded to Customer at the end of year 4. For example, in the event Accuray offers only four (4) Upgrades/Enhancements over the term of this Agreement, it shall refund to Customer the amount of $200,000, payable within thirty (30) days after the end of the fourth year of this Agreement. No refunds will be provided if Accuray makes available the appropriate Upgrades/Enhancements each year, but Customer elects not to order the Upgrades/Enhancements.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of this Agreement, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased by Customer from Accuray as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 11 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local time Monday through Saturday (excluding Federal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-877-668-8667, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it

performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. This would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 98% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding Federal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15th day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of 90-97.9%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 98%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock at Customer's facility all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *Cancellation Penalty.* Customer shall have the right to cancel and terminate this Agreement, with or without cause, at any time upon thirty (30) days' prior written notice to Accuray. There shall be no penalty for such cancellation and termination. Notwithstanding the foregoing, if Customer has taken an Upgrade(s)/Enhancement(s) for that year, and the payments made for that year at the time of cancellation are less than the then current list price of the Upgrade(s)/Enhancement(s) accepted, after subtracting the pro rated price for service from any payments made, Customer will be responsible for the difference between the amount actually paid and the list price of the Upgrade(s)/Enhancement(s). Additionally, if Customer has taken an Upgrade/Enhancement in advance against a future year's Upgrade/Enhancement under this Agreement, then Customer shall pay the then current list price for the Upgrade/Enhancement that was taken in advance. Should Customer not pay, then Accuray will remove said Upgrade/Enhancement.

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is

made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

QuickLinks

ACCURAY CYBERKNIFE® PLATINUM ELITE SERVICE AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.38

ACCURAY CYBERKNIFE® SILVER ELITE SERVICE AGREEMENT

1. *Scope of Service*. This Silver Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (user Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. *Effective Date.* This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. Definitions:

1.2.1. *Bug Fix* means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. *Update* means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. *Upgrade/Enhancement* means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades/Enhancements of the software.

1.2.4. *New Version/New Product* means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. *Exclusions* means items that are excluded from the definition of Upgrade/Enhancement because of the very nature of the item, as compared to the rest of the components in the system whether in the software and/or hardware configuration, it

would cost, in Accuray's sole opinion, more than the average current list price of an Upgrade/Enhancement to an existing product to implement. Examples of such components that are made up of software and/or hardware components that would likely fall into this category are: the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade/Enhancement, and such items may be offered as an Update/Enhancement at Accuray's sole discretion.

1.2.6. *Consumables* means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. *Service Period.*

2.1. The Agreement shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year (the "Optional Year 5") at the price of $260,000 and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of the Effective Date of this Agreement.

2.2. The Agreement price shall be one of the following, at Customer's option (indicate preferred option):

- o $260,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o $68,500 quarterly, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o $24,000 monthly, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. *Equipment to be Covered.* This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. The Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. *Software Maintenance (Bug Fixes and Updates)*

4.1. For the duration of this Agreement, Accuray will provide software Updates and Bug Fixes for software that is included as a part of the CyberKnife System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed by Accuray service engineers. Software maintenance will be included only for those product features that were originally purchased with the System or subsequently purchased by Customer from Accuray as a System Upgrade/Enhancement.

4.2. Customer is not entitled to any Upgrades/Enhancements or New Version/New Products under this Agreement. Customer may purchase Upgrades/Enhancements and New Version/

New Products separately, and such Upgrades/Enhancements or New Version/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. *System Quality Assurance Testing*

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 11 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. *Service Coverage Period*

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local time Monday through Saturday (excluding Federal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-877-668-8667, of any problem or defect with the System and, at no charge, provide Accuray service engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray service engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time. Upon completion of a service or preventive maintenance call, Accuray shall leave Customer a copy of a service report describing the service or maintenance performed.

6.5. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. This would be at Customer expense.

7. *Uptime*

7.1. *Uptime/Downtime.* Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. *Guarantee.* Accuray will guarantee that the System shall have an Uptime percentage of at least 98% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding Federal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. *Calculation.* Downtime will be calculated from the time a down System call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. *Reports.* Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. *Failure to Meet Guarantee.* For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of 90-97.9%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 98%.

8. *Replacement Parts*

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock at Customer's facility all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and

regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Field Service engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. *Exceptions*

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above in Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. *Cancellation Penalty.* Customer shall have the right to cancel and terminate this Agreement, with or without cause, at any time upon thirty (30) days' prior written notice to Accuray. There shall be no penalty for such cancellation and termination.

11. *Breach.* Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the other shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. *Limitation of Liability and Warranty*

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or

damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. *Patient Information.* In performing the services hereunder, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accuray shall comply with all laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

14. *Assignment.* Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

15. *Disputes and Governing Laws*

15.1. In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

15.2. All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

16. *Notices.* All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 with cc to: General Counsel	

17. *Waiver.* The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

18. *Severability.* If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

20. *Amendments.* Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

21. *Entire Agreement.* This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

ACCURAY INCORPORATED	**CUSTOMER**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Incorporated

QuickLinks

ACCURAY CYBERKNIFE® SILVER ELITE SERVICE AGREEMENT

Exhibit 10.39

ACCURAY CYBERKNIFE® INTERNATIONAL PLATINUM ELITE SERVICE AGREEMENT

1. **Scope of Service.** This Platinum Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (user Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. **Effective Date.** This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. **Definitions**

1.2.1. **Bug Fix.** "Bug Fix" means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. **Update.** "Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. **Upgrade/Enhancement.** "Upgrade/Enhancement" means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrade/Enhancement of the software.

1.2.4. **New Version/New Product.** "New Version/New Product" means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. **Exclusions.** "Exclusions" means items that are excluded from the definition of Upgrade/Enhancement because of the very nature of the item, as compared to the rest of the components in the system whether in the software and/or hardware configuration, it would cost, in Accuray's sole opinion, more than the average current list price of an

Upgrade/Enhancement to an existing product to implement. Examples of such components that are made up of software and/or hardware components that would likely fall into this category are: the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This Exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade/Enhancement, and such items may be offered as an Update/Enhancement at Accuray's sole discretion.

1.2.6. **Consumables.** "Consumables" means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. **Service Period.**

2.1. This Agreement shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year ("Optional Year 5") at the price of $425,000 and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of Effective Date of this Agreement.

2.2. The Agreement price shall be one of the following, at Customer's option (indicate preferred option):

- o $425,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o $110,000 quarterly, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o $37,000 monthly, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. **Product Upgrades/Enhancements**

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers or an authorized Accuray Distributor and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Accuray's total commitment under the initial four (4) year Agreement is to deliver six (6) Upgrades/Enhancements, three (3) software and three (3) hardware or software, as follows. No Upgrades/Enhancements will be due under this Agreement during Year 1 (the Warranty Year). For each of the subsequent three (3) years, Customer is entitled to one (1) software and one (1) hardware or software Upgrade/Enhancement in each year, such that Customer will receive two (2) Upgrades/Enhancements during each of years 2, 3 and 4. Customer may order an available Upgrade/Enhancement during Year 1 (the Warranty Year), or order an additional Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will be charged against any future Upgrades/Enhancements due Customer under this Agreement. For example, if Customer orders an Upgrade/Enhancement during Year 1

(the Warranty Year), Customer is entitled to only five (5) subsequent Upgrades/Enhancements under this Agreement during years 2, 3 and 4.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which Upgrades/Enhancements they wish to obtain. In order to receive the desired Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than two (2) Upgrades/Enhancements are made available in a given year, Customer may choose which two (2) they wish to have installed on their system. Any Upgrades/Enhancements ordered will count against the total of six (6) Upgrades/Enhancements that Customer is entitled to under this Agreement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, two (2) additional Upgrades/Enhancements will be made available. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to 10 days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Platinum coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Platinum coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

3.6. Accuray agrees to use reasonable efforts to complete during each year (following the Warranty Year) of this Agreement, and agrees, upon commercial availability and receipt of a signed order from Customer, to include on Customer's System two (2) Upgrades/Enhancements.

3.7. If Accuray is unable to offer an Upgrade/Enhancement in any Agreement year, not including Year 1 (the Warranty Year), Accuray will credit Customer $100,000 for each Upgrade/Enhancement for each year it is unable to offer an Upgrade/Enhancement. Such credit will be applied against future service charges, such as the next year's payment under this Agreement, or, in the event that Customer does not renew the Agreement after year 4, monies owed will be refunded to Customer at the end of year 4. For example, in the event Accuray offers only four (4) Upgrades/Enhancements over the term of this Agreement, it shall refund to Customer the amount of $200,000, payable within thirty (30) days after the end of the fourth year of this Agreement. No refunds will be provided if Accuray makes available the appropriate Upgrades/Enhancements each year, but Customer elects not to order the Upgrades/Enhancements.

4. **Software Maintenance (Bug Fixes and Updates)**

4.1. For the duration of this Agreement, Accuray will provide software Updates and Bug Fixes for software that is included as an integral part of the System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed for Customer by Accuray Service Engineers (which shall include an authorized Accuray Distributor). Software maintenance will be included only for those product features that were originally purchased

with the System, provided under this Agreement, or subsequently purchased by Customer from Accuray as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. System Quality Assurance Testing

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 11 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. Service Coverage Period

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through an authorized Accuray Distributor or contractor, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. As necessary, Accuray Service Engineers will respond on-site within twenty-four (24) hours of the initial telephonic response.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray Service Engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray Service Engineers to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray Service Engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray Service Engineers will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time.

6.5. Upon completion of a service or preventive maintenance call, the Accuray Service Engineer shall leave Customer a copy of a service report describing the service or maintenance performed.

6.6. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. This would be at Customer expense.

7. Uptime

7.1. **Uptime/Downtime.** Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. **Guarantee.** Accuray warrants that the System shall have an uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. **Calculation.** Downtime will be calculated from the time a down system call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System Upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. **Reports.** Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. **Failure to Meet Guarantee.** For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. Replacement Parts

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock at Customer's facility all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be

manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Service Engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer's facility.

9. **Exceptions.**

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above on Page 2, Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. **No Cancellation.** Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. **Breach.** Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the non-breaching party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. **Limitation of Liability and Warranty**

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST

REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

14. **Dispute and Governing Laws**

14.1. **Process.** In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the highest management of Accuray and of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. **Applicable Law.** All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All

communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

16. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

20. **English Language Requirement.** This Agreement is written in the English Language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects.

21. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

ACCURAY INCORPORATED	**DISTRIBUTOR**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Inc.

QuickLinks

ACCURAY CYBERKNIFE® INTERNATIONAL PLATINUM ELITE SERVICE AGREEMENT

Exhibit 10.40

ACCURAY CYBERKNIFE® INTERNATIONAL GOLD ELITE SERVICE AGREEMENT

1. **Scope of Service.** This Gold Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (user Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. **Effective Date.** This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. **Definitions**

1.2.1. **Bug Fix.** "Bug Fix" means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. **Update.** "Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. **Upgrade/Enhancement.** "Upgrade/Enhancement "means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrade/Enhancement of the software.

1.2.4. **New Version/New Product.** "New Version/New Product" means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. **Exclusions.** "Exclusions" means items that are excluded from the definition of Upgrade/Enhancement because of the very nature of the item, as compared to the rest of the components in the system whether in the software and/or hardware configuration, it would cost, in Accuray's sole opinion, more than the average current list price of an

Upgrade/Enhancement to an existing product to implement. Examples of such components that are made up of software and/or hardware components that would likely fall into this category are: the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This Exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade/Enhancement, and such items may be offered as an Update/Enhancement at Accuray's sole discretion.

1.2.6. **Consumables.** "Consumables" means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. **Service Period.**

2.1. This Gold Service Agreement shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year ("Optional Year 5") at the price of $350,000 and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of Effective Date of this Agreement.

2.2. The Agreement price shall be one of the following, at Customer's option (check option selected):

- o $350,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o $91,250 quarterly, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o $30,750 monthly, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. **Product Upgrades/Enhancements**

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers or an authorized Accuray Distributor and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

3.2. Accuray's total commitment under the initial four (4) year Agreement is to deliver three (3) software Upgrades/Enhancements as follows. No Upgrades/Enhancements will be due under this Agreement during the Year 1 (the Warranty Year). For each of the subsequent three (3) years, Customer is entitled to one (1) software Upgrade/Enhancement in each year, such that Customer will receive one (1) software Upgrade/Enhancement during each of years 2, 3 and 4. Customer may order an available software Upgrade/Enhancement during the Year 1 (the Warranty Year), or order an additional software Upgrade/Enhancement during years 2 or 3, and such Upgrade/Enhancement will be charged against any future Upgrades/Enhancements due Customer under this Agreement. For example, if Customer orders a software Upgrade/Enhancement during Year 1 (the Warranty Year), Customer is entitled to

only two (2) subsequent software Upgrades/Enhancements under this Agreement during years 2, 3 and 4.

3.3. Customer will be notified of all available Upgrades/Enhancements, and may select which software Upgrades/Enhancements they wish to obtain. In order to receive the desired software Upgrades/Enhancements under this Agreement, Customer must submit a signed order for the Upgrade/Enhancement. If such software Upgrade/Enhancement is ordered pursuant to this Agreement, it will be delivered free of charge. In the event that more than one (1) software Upgrade/Enhancement is made available in a given year, Customer may choose which they wish to have installed on their system. Any software Upgrades/Enhancements ordered will count against the total of three (3) software Upgrades/Enhancements that Customer is entitled to under this Agreement. The installation of the Upgrades/Enhancements will be scheduled once the Upgrade/Enhancement is available to the market and Accuray receives the signed order from Customer during either the warranty or service period.

3.4. If Customer elects to have this coverage extend for Optional Year 5, one (1) additional software Upgrades/Enhancements will be made available. Customer is under no obligation to exercise the option for Optional Year 5. Customer may exercise the option for Optional Year 5 by letter sent to Accuray, in accordance with the Notice provision set forth below, at any time up to 10 days before the Optional Year 5 commences. If Customer does not exercise the option, there will be no charge to Customer, and Accuray will not provide Gold coverage for Optional Year 5. If Customer exercises the option, Accuray is obligated to provide Gold coverage on the same terms as the previous Agreement years.

3.5. Installation of Upgrades/Enhancements will be scheduled up to six (6) months ahead of time. Accuray will communicate the launch and features with Customer. Customer will be responsible for requesting the offered software Upgrade/Enhancement. Upon receipt of a signed order, Accuray Service will be responsible for scheduling installations. Accuray will not commit to the timing of any specific Upgrades/Enhancements.

3.6. Accuray agrees to use reasonable efforts to complete during each year (following the Warranty Year) of this Agreement, and agrees, upon commercial availability and receipt of a signed order from Customer, to include on Customer's System one (1) Upgrade/Enhancement.

3.7. If Accuray is unable to offer a software Upgrade/Enhancement in any Agreement year, not including Year 1 (the Warranty Year), Accuray will credit Customer $100,000 for each software Upgrade/Enhancement for each year it is unable to offer an software Upgrade/Enhancement. Such credit will be applied against future service charges, such as the next year's payment under this Agreement, or, in the event that Customer does not renew the Agreement after year 4, monies owed will be refunded to Customer at the end of year 4. For example, in the event Accuray offers only two (2) software Upgrades/Enhancements over the term of this Agreement, it shall refund to Customer the amount of $200,000, payable within thirty (30) days after the end of the fourth year of this Agreement. No refunds will be provided if Accuray makes available the appropriate software Upgrades/Enhancements each year, but Customer elects not to order the Upgrades/Enhancements.

4. **Software Maintenance (Bug Fixes and Updates)**

4.1. For the duration of this Agreement, Accuray will provide software Updates and Bug Fixes for software that is included as an integral part of the System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed for Customer by Accuray Service Engineers (which shall include an authorized Accuray Distributor). Software maintenance will be included only for those product features that were originally purchased

with the System, provided under this Agreement, or subsequently purchased by Customer from Accuray as a System Upgrade/Enhancement.

4.2. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.3. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. System Quality Assurance Testing

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 11 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

6. Service Coverage Period

6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through an authorized Accuray Distributor or contractor, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. As necessary, Accuray Service Engineers will respond on-site within twenty-four (24) hours of the initial telephonic response.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray Service Engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray Service Engineers to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray Service Engineers are required to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray Service Engineers will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time.

6.5. Upon completion of a service or preventive maintenance call, the Accuray Service Engineer shall leave Customer a copy of a service report describing the service or maintenance performed.

6.6. To the extent that they become available during the term of this Agreement, Customer will be entitled to the benefits of remote diagnostic capabilities used by Accuray support engineers. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. This would be at Customer expense.

7. Uptime

7.1. **Uptime/Downtime.** Uptime shall mean any time that the System is not down ("Uptime"). A down System means that a patient cannot be treated due to an actual malfunction of the System and that the System is immediately available for an Accuray service engineer to work on it ("Downtime").

7.2. **Guarantee.** Accuray warrants that the System shall have an uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding legal holidays). The first 12-month period will start as of the Effective Date of this Agreement.

7.3. **Calculation.** Downtime will be calculated from the time a down system call is received by Accuray to the time of repair, counting normal treatment hours. The System will be calculated as up when the System repair has been completed and the System is available for treatment during normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, System Upgrades, and time that the System is unavailable as a result of something beyond Accuray's control, including without limitation (i) Customer's use of the System for purposes other than its intended and authorized purposes, (ii) the negligence of Customer, (iii) the failure of Customer to operate the System in accordance with the User Manuals, (iv) use by untrained operators, (v) e-Stops, power outages or the like or (vi) the negligence of any party other than Accuray, will be calculated as Uptime.

7.4. **Reports.** Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. **Failure to Meet Guarantee.** For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

8. Replacement Parts

8.1. Accuray shall make a commercially reasonable effort to supply at the time of need or stock at Customer's facility all tools, equipment, replacement parts and Consumables as would reasonably be required by Accuray to perform the required repairs and return the System to good working order. Accuray shall make a commercially reasonable effort to maintain at its factory or service center(s) a stock of spare parts, including, in particular, long-procurement-lead-time parts.

8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be

manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Service Engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer facility.

9. **Exceptions.**

9.1. All obligations of Accuray under this Agreement shall be suspended and/or cease in the event of:

9.1.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

9.1.2. The intentional abuse of the System or negligence by Customer.

9.1.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by or at the express written direction of Accuray).

9.1.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's User Manuals, including maintenance of the necessary operating environment and line current conditions, and the failure of Customer to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

9.1.5. Failure to make payments in accordance with the payment schedule set forth above on Page 2, Section 2.2.

9.2. If corrective action or adjustment of the System is performed by Customer's staff at the direction of Accuray, such action or adjustment shall not reduce Accuray's responsibility under this Agreement or liability for the performance of the System.

10. **No Cancellation.** Neither party shall have the right to cancel this Agreement, except as set forth below in Section 11 "Breach."

11. **Breach.** Either party reserves the right to cancel this Agreement by written notice upon the breach of the other. An event of breach may include, but is not limited to, failure to make payment due under this Agreement, failure to provide access as required to execute the services contemplated by this Agreement, failure to perform and log QA, or the filing of notice under Federal bankruptcy laws. If the breaching party is unable or unwilling to cure or make a good faith effort to cure such breach within thirty (30) days of actual written notice the non-breaching party shall be relieved of all obligations under this Agreement and may terminate. Termination shall not be the terminating party's exclusive remedy, and the terminating party shall retain all other available legal and equitable remedies.

12. **Limitation of Liability and Warranty**

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST

REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

12.2. This is a service agreement. THERE ARE NO INCLUDED OR IMPLIED ACCURAY WARRANTIES OF PRODUCT FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

14. **Dispute and Governing Laws**

14.1. **Process.** In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the highest management of Accuray and of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. **Applicable Law.** All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All

communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

16. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

20. **English Language Requirement.** This Agreement is written in the English Language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects.

21. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

ACCURAY INCORPORATED	**DISTRIBUTOR**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Inc.

QuickLinks

ACCURAY CYBERKNIFE® INTERNATIONAL GOLD ELITE SERVICE AGREEMENT

Exhibit 10.41

ACCURAY CYBERKNIFE® INTERNATIONAL SILVER ELITE SERVICE AGREEMENT

1. **Scope of Service.** This Silver Elite Service Agreement ("Agreement") is made by and between Accuray Incorporated ("Accuray"), a California corporation, located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and ("Customer"), located at , for Accuray to provide planned maintenance service when scheduled by Accuray and corrective maintenance service when requested by Customer to maintain the CyberKnife System installed at Customer's site at ("System") so that it performs substantially in accordance with the Specifications (user Manuals and Reference Guides) defined for the System revision as installed and/or upgraded.

1.1. **Effective Date.** This Agreement shall be effective as of demonstration of acceptance testing by Accuray as described in the CyberKnife Quotation and Purchase Agreement dated , 2005 and signed by the parties, or the expiration of any prior service or warranty agreement, if applicable.

1.2. **Definitions**

1.2.1. **Bug Fix.** "Bug Fix" means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

1.2.2. **Update.** "Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

1.2.3. **Upgrade/Enhancement.** "Upgrade/Enhancement "means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade/Enhancement of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrade/Enhancement of the software.

1.2.4. **New Version/New Product.** "New Version/New Product" means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a New Version or New Product.

1.2.5. **Exclusions.** "Exclusions" means items that are excluded from the definition of Upgrade/Enhancement because of the very nature of the item, as compared to the rest of the components in the system whether in the software and/or hardware configuration, it would cost, in Accuray's sole opinion, more than the average current list price of an

Upgrade/Enhancement to an existing product to implement. Examples of such components that are made up of software and/or hardware components that would likely fall into this category are: the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This Exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade/Enhancement, and such items may be offered as an Update/Enhancement at Accuray's sole discretion.

1.2.6. **Consumables.** "Consumables" means items that are not necessarily part of the CyberKnife system, but are consumed as part of the operation of the CyberKnife system, for example fiducials.

2. **Service Period.**

2.1. This Agreement shall be for an initial period of four (4) years (years 1, 2, 3, & 4) from the Effective Date of this Agreement, including the warranty year, with an optional fifth year. There is no payment required under this Agreement in the first year ("Year 1" or the "Warranty Year"). Customer may elect to receive an additional optional fifth year ("Optional Year 5") at the price of $260,000 and on terms that are defined below (Section 3.4). Billing will commence on the day following the anniversary of Effective Date of this Agreement.

2.2. The Agreement price shall be one of the following, at Customer's option (indicate preferred option):

- o $260,000 per year, paid yearly in advance, for years 2, 3, 4 and Optional Year 5.
- o $68,500 quarterly, paid at the beginning of each quarter, for years 2, 3, 4 and Optional Year 5.
- o $23,250 monthly, paid at the beginning of each month, for years 2, 3, 4 and Optional Year 5.

3. **Equipment to be Covered**

3.1. This Agreement is available only for equipment that was purchased directly from Accuray, installed by Accuray engineers or an authorized Accuray Distributor and has not been moved from its original installation location or disconnected from its original power supply without written permission or direction from Accuray. This Agreement must immediately commence at the expiration of the factory warranty period or prior service agreement. In the event of lapse of service, Customer shall have the right to reinstate such service by payment of the current service fee for the then-current service period in addition to the reasonable costs for Accuray to inspect, repair, and return the System to the state at which the System would have been had a service agreement been in force continuously since the expiration of the System factory warranty.

4. **Software Maintenance (Bug Fixes and Updates)**

4.1. For the duration of this Agreement, Accuray will provide software Updates and Bug Fixes for software that is included as an integral part of the System. These Updates and Bug Fixes may be transmitted electronically to Customer for subsequent installation by Customer technicians. Corrections of significant complexity, however, may be installed for Customer by Accuray Service Engineers (which shall include an authorized Accuray Distributor). Software maintenance will be included only for those product features that were originally purchased with the System, provided under this Agreement, or subsequently purchased by Customer from Accuray as a System Upgrade/Enhancement.

4.2. Customer is not entitled to any Upgrades/Enhancements or New Versions/New Products under this Agreement. Customer may purchase Upgrades/Enhancements and New Versions/New Products separately, and such Upgrades/Enhancements or New Versions/New Products will then be maintained in accordance with the terms of this Agreement.

4.3. During the service periods, Accuray shall provide Customer with any and all applicable product notices regarding maintenance, support, Upgrades/Enhancements, Updates and Bug Fixes generally circulated by Accuray to Accuray Customers with CyberKnife installations.

4.4. All such Updates and Bug Fixes, when made by Accuray or according to Accuray instructions or the product notice, shall be considered to be done by and under the direction of Accuray.

5. System Quality Assurance Testing

5.1. The maintenance and support services provided by Accuray under this Agreement do not include any System Quality Assurance Testing ("QA"). System commissioning and QA are the sole responsibility of Customer, and Customer is advised to perform QA on a regular and ongoing basis. In addition, Customer is required to maintain up-to-date QA logs. If Customer fails to perform the appropriate QA of the System, and to record such QA in the appropriate logs, Accuray, upon giving Notice to Customer in accordance with Section 11 of this Agreement, reserves the right to terminate this Agreement.

5.2. Prior to performing any scheduled service or preventive maintenance on the System, Accuray will review Customer's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the System. In the event that the requested service is necessary to bring the System to a point where QA can be performed, Accuray will proceed with the service only after Customer signs a written acknowledgement that QA is Customer's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments.

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6.1. The Service Coverage Period will be the hours of 8:00 AM to 9:00 PM local (to Customer's installation location) time Monday through Saturday (excluding local legal holidays). Customer has the option to request service during non-normal hours, in which case Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) Accuray shall provide Customer with contact points to request service on a 24-hours-a-day, 7-days-a-week ("24/7") basis. Accuray, directly or remotely as the situation requires, either with its own personnel or through an authorized Accuray Distributor or contractor, shall initially respond within one (1) hour of receipt of a call for service. The initial response shall include telephone support, including (as applicable) consultations, diagnostic assistance and advice on the use and maintenance of the System. As necessary, Accuray Service Engineers will respond on-site within twenty-four (24) hours of the initial telephonic response.

6.2. Customer will promptly notify Accuray, by calling Accuray's Customer Support Line at 1-408-716-4700, of any problem or defect with the System and, at no charge, provide Accuray Service Engineers access to the System and use of adequate facilities and equipment at mutually agreeable times as necessary for Accuray Service Engineers to perform the service. Customer shall have as many service calls as are reasonably needed to maintain the System so that it performs substantially in accordance with the Specifications during the period of this Agreement.

6.3. Use of the facility CT scanner may be required for testing purposes and shall be scheduled to allow as expeditious completion of service as is reasonably possible. Facility staff will operate the CT scanner. If service is unreasonably delayed and Accuray Service Engineers are required

to remain on site, Accuray may choose to charge the current hourly service rates for the duration of the delay period.

6.4. Accuray Service Engineers will perform System planned maintenance as prescribed in the current System maintenance manuals. Planned service will be scheduled at least two (2) weeks in advance and will be performed at a mutually agreed-upon time.

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7.4. **Reports.** Customer is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the 15^{th} day of each month.

7.5. **Failure to Meet Guarantee.** For each year of the term of this Agreement, if Accuray achieves a 12-month uptime average of less than 95%, the Agreement period will be extended one (1) week for every percentage point or fraction thereof below 95%.

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8.2. Replacement parts used under this Agreement may be either new manufacture or factory refurbished at Accuray's choice. All replacement parts and assemblies provided will be manufactured in accordance with Accuray's quality system, and any applicable laws and regulations. Parts replaced under this Agreement become the property of Accuray and will be disposed of by Accuray Service Engineers. Notwithstanding the foregoing, all parts that are considered by local regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling" will be disposed of or retained by Customer at Customer facility.

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12. **Limitation of Liability and Warranty**

12.1. If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from any liability or damages arising out of such fault or neglect. Accuray's liability arising under this Agreement shall be limited to an amount not to exceed the payment(s) received by Accuray for the then current Agreement year. In addition, Accuray shall not be liable to Customer in the event that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or the loss or damage is due to an

act of God or other causes beyond its reasonable control. IN NO EVENT WILL ACCURAY BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR PERFORMANCE OF THE SYSTEM.

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14. **Dispute and Governing Laws**

14.1. **Process.** In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the highest management of Accuray and of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

14.2. **Applicable Law.** All disputes arising out of or relating to this Agreement not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

15. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All

communications will be sent to the addresses set forth below or to such other address as may be specified by either party in writing to the other party in accordance with this Section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089	
with cc to: General Counsel	with cc to:

16. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

17. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

18. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

19. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

20. **English Language Requirement.** This Agreement is written in the English Language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects.

21. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

ACCURAY INCORPORATED	**DISTRIBUTOR**
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PLEASE MAKE CERTAIN THAT YOU HAVE SELECTED A PAYMENT OPTION IN ACCORDANCE WITH SECTION 2.2, ABOVE.

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: Dated:

General Counsel, Accuray Inc.

QuickLinks

ACCURAY CYBERKNIFE® INTERNATIONAL SILVER ELITE SERVICE AGREEMENT

Exhibit 10.42

CYBERKNIFE® G4 SHARED OWNERSHIP AGREEMENT

Customer: ("*Customer*")

Account Number:

Contact Name:

Quote ID:

Address:

Revision Number:

Revision Date:

RSD Contact:

Expiration Date:

Only valid for primary customer named above. This CyberKnife Shared Ownership Agreement ("Agreement") is non-transferable and not for export outside the U.S.

A. Quote

	Part Description	Quantity	Unit Price	Line Total
1.	CyberKnife Robotic Radiosurgery System (See B below)	1	$ 4,195,000.00	$ 4,195,000.00
2.	Additional Options Total (See C Below)			$ 0.00
3.	Special Promotion if this Agreement is signed by the Expiration Date. [However, should Customer, at any time prior to installation, decide not to purchase the InView™ Workstation or the MultiPlan™ Workstation, the additional discount will be cancelled.]			
4.	Special Q2 2007 RoboCouch™ Patient Positioning System Promotion if Customer purchases the RoboCouch in Section C.1 Below. [**ONLY APPLIES IF ROBOCOUCH IS PURCHASED**]			($ 200,000.00)
			Total Due	**$ 4,195,000.00**

B. The Base CyberKnife System—G4 Configuration ***$4,195, 000.00***

1.	**Robotic Treatment Delivery System**	
1.1.	Image-Guidance System	
1.1.1.	Diagnostic X-ray sources	
1.1.2.	In-Floor Amorphous Silicon X-Ray Detectors	
1.2.	600 MU/minute Linear Accelerator (Linac) with secondary collimators	
1.3	Robotic Manipulator	
1.4	Patient Treatment Couch	
1.4.1.	Two (2) CT Overlay Kits included	
1.5	Treatment Delivery Control Console	
2.	**Treatment Planning System**	
2.1.	Two (2) MultiPlan™ Treatment Planning Workstations	
2.2.	One (1) InView™ Workstation	
2.3.	CK Remote™ Open Architecture	
3.	**Clinical Application Modules**	
3.1.	Synchrony® Respiratory Tracking System	
3.2.	Xsight™ Spine Tracking System	
4.	**Data Management Systems**	
4.1.	Patient Archive and Restore System	

C. Additional Options

1. RoboCouch™ Patient Positioning System

Select RoboCouch Patient Positioning System by marking the box below.

o RoboCouch Patient Positioning System $800,000.00

When selecting RoboCouch Patient Positioning System, the Patient Treatment Couch (Section B.1.4) is removed from the Base CyberKnife System and replaced with the RoboCouch Patient Positioning System.

Patient Treatment Couch Credit ($350,000.00)

2. Additional MultiPlan™ Treatment Planning Workstation

Two (2) MultiPlan Workstations are included with the Base CyberKnife System; however, additional MultiPlan Workstations may be purchased. Select additional MultiPlan Workstations by marking the box below.

o MultiPlan Workstation $125,000.00 each

Number of Additional MultiPlan Workstations: **MultiPlan Subtotal** $0.00

3. InView™ Workstation

One InView Workstation is included with the Base CyberKnife System; however, additional InView Workstations may be purchased. Select additional InView Workstations by marking the box below.

o	InView Workstation	$45,000.00 each
	Number of Additional InView Workstations:	
	InView Subtotal	$0.00
	Additional Options Total	$0.00

D. Pricing & Inclusions

1. Pricing

1.1	**CyberKnife® Robotic Radiosurgery System (from Section A above)**		**$4,195,000.00**
1.2	**Down Payment Options:**	o	**$100,000**
	Accuray offers the following down payment options. Select one of the following down payment options by marking the box next to the down payment option desired (the "*Down Payment*"). The Down Payment is due to Accuray in accordance with the applicable dates specified in Section D.2.1 (Down Payment Payments) below.	o	**$250,000**
		o	**$500,000**
		o	**$1,000,000**
		o	**$1.500,000**
		o	**$2,000,000**
		o	**$2,500,000**
1.3	**Remaining System Price (with Additional Options and less Down Payment)**		

2. Payment Terms

2.1. **Down Payment Payments**

Total Amount of Down Payment	Amount due upon Customer's signature	Amount due within 60 days of signature	Amount due upon delivery of System	Amount due upon Acceptance
$ 100,000	$100,000	N/A	N/A	N/A
$ 250,000	$100,000	$150,000	N/A	N/A
$ 500,000	$100,000	$400,000	N/A	N/A
$1,000,000	$100,000	$400,000	$ 400,000	$100,000
$1,500,000	$100,000	$400,000	$ 850,000	$150,000
$2,000,000	$100,000	$400,000	$1,300,000	$200,000
$2,500,000	$100,000	$400,000	$1,750,000	$250,000

2.2. **Minimum Monthly Payments**

Total Amount of Down Payment	Minimum Monthly Payment
$100,000	$45,000
$250,000	$43,000
$500,000	$40,000
$1,000,000	$35,000
$1,500,000	$30,000
$2,000,000	$25,000
$2,500,000	$20,000

2.3. **Revenue Share Payments**
All Technical Fees (as defined in Section 2.1 of the Accuray Terms and Conditions set forth below) collected during the Term of this Agreement are split equally (50/50) between Customer and Accuray. The Revenue Share Payments are net of the Minimum Monthly Payments.

2.4. **Credit Worthiness**
Accuray's obligations under this Agreement are subject to approval of Customer's credit worthiness by Accuray or its designees and agents ("*Accuray Finance*"). Customer understands that interest rates vary depending upon market fluctuations until all financing related documents are fully executed.

3. Shipping Terms:

3.1. F.O.B. Destination.

3.2. Anticipated delivery scheduled for _____.

4. Site Preparation and Installation:

4.1. Site preparation at Customer's expense.

4.2. Installation included at Accuray's expense.

5. Warranty:

5.1. 1 year warranty includes all parts and labor.

6. Training:

6.1. Training provided for up to 5 personnel (e.g. surgeon, radiation oncologist, physicist, radiation therapist). Hotel accommodations and travel costs are not included.

6.2. Additional attendees will be charged according to the then current training price list.

E. Contingencies

There are no contingencies at this time.

F. Preventive Maintenance and Service Contracts

In order to ensure that appropriate preventive maintenance and service are provided for the equipment that is the subject of this Agreement, Customer acknowledges and agrees that if and when it executes this Agreement, then Customer will enter into Accuray's Diamond Elite Preventive Maintenance and Service Agreement. Accuray's Diamond Elite Preventive Maintenance and Service Agreement covers the Base CyberKnife System as described in Section B above, up to 2 Multiplan Workstations (including the 2 MultiPlan Workstations in the Base CyberKnife System), and up to 3 InView Workstations (including the InView Workstation in the Base CyberKnife System). If Customer has more than 2 MultiPlan Workstations installed (including the MultiPlan Workstations in the Base CyberKnife System) or more than 3 InView Workstations installed (including the InView Workstation in the Base CyberKnife System), then an additional charge of $18,750.00 per year per MultiPlan Workstation and $6,750.00 per year per InView Workstation, as applicable, will be added by Accuray to the invoice for Customer's Diamond Elite Preventive Maintenance and Service contract and Customer shall pay such amounts to Accuray. A copy of Accuray's Diamond Elite Preventive Maintenance and Service contract is provided to you

separately. The pricing for Accuray's standard Diamond Elite Preventive Maintenance and Service contract is as follows:

☒ **Diamond Elite Service:** Five (5) year contract, no payments until after warranty year

First Year (Warranty Year)	No Payment
Second Year	$460,000.00 per year
Third Year	$460,000.00 per year
Fourth Year	$460,000.00 per year
Fifth Year	$460,000.00 per year

Payment Terms: See Diamond Elite Preventive Maintenance and Service Agreement provided separately.

G. Accuray Terms and Conditions

1. Definitions; Terms. "*Accuray Products*" means all products manufactured by Accuray Incorporated ("*Accuray*") including, but not limited to, Accuray-produced hardware, software, and firmware. "*Accuray Services*" means services of Accuray related to the warranty provided herein, but shall not include any services relating to the Diamond Elite Preventive Maintenance and Service Contract between Customer and Accuray, which shall be governed by the terms of the separate Diamond Elite Preventive Maintenance and Service Contract. "*Accuray System*" means the CyberKnife System provided by Accuray to Customer hereunder, which includes component parts produced by other manufacturers. "*Accuray Update*" means any update offered by Accuray to any Accuray Product or Accuray System. "*Accuray Upgrade*" means any upgrade offered by Accuray to any Accuray Product or Accuray System. "*Specifications*" means the user manuals, reference guides, and configuration documentation provided by Accuray to Customer in writing, as updated from time to time by Accuray. All Accuray Products, Accuray Services, Accuray System, Accuray Upgrades and Accuray Updates (collectively, "*Accuray Deliverables*") are furnished only on the terms and conditions stated herein. Any different or additional terms contained in Customer's purchase order, or similar documents shall not bind Accuray.

2. Payments.

2.1. Under this Agreement, Customer will be responsible for making three types of payments to Accuray: (i) the Down Payment, (ii) Minimum Monthly Payments and (iii) Revenue Share Payments

2.1.1. **Down Payment.** Customer shall pay Accuray a Down Payment in the amount selected by Customer in Section D.1.2 (Down Payment Options) above, which Down Payment shall be due in accordance with the applicable dates specified in Section D.2.1 (Down Payment Payments) above.

2.1.2. **Minimum Monthly Payments.** The Minimum Monthly Payments are certain minimum payments that Customer is required to make to Accuray each month regardless of the amount of revenue that Customer has generated in such month. The amount of Customer's Minimum Monthly Payment is dependent upon the amount of Customer's Down Payment. Customer agrees that the minimum monthly payment amount set forth in Section D.2.2 (Minimum Monthly Payments) above which corresponds to the value of Customer's Down Payment shall constitute the amount of Customer's Minimum Monthly Payment under this Agreement.

2.1.2.1. Starting with the first (1^{st}) month following the Commencement Date (as defined below), in the event that the Revenue Share payment (as defined below) to be made by Customer to Accuray is not equal to or greater than the amount of Customer's Minimum Monthly Payment, Customer shall make a payment to Accuray in the

amount of Customer's Minimum Monthly Payment, notwithstanding the actual amount of any fees collected by Customer with respect to such month. The Minimum Monthly Payments will be due on the third (3rd) business day of each month and shall continue for the Term of this Agreement. For the avoidance of doubt, and by way of example, if the Commencement Date is on any day of the month of May, the Minimum Monthly Payment shall commence on the third (3rd) business day of June.

2.1.3. **Revenue Share Payments.** The Revenue Share Payments are payments that Customer is required to make to Accuray based on an equal division (50/50) of the total Technical Fees (as defined below) collected by Customer each month.

2.1.3.1. **Treatment Services.** "*Treatment Services*" means all services provided using the Accuray Deliverables including but not limited to: treatment planning services, treatment delivery services, and other such services that may become available in the future, for which reimbursement is sought.

2.1.3.2. **Technical Fees.** "*Technical Fees*" means as all payments received by Customer for the Treatment Services being provided using the Accuray Deliverables, excluding the "professional" services collected for the physician surgeons and radiation oncologists administering or prescribing the treatment (such professional services fees, "*Professional Fee*"). Revenue Share payments are due for the Term of this Agreement. Revenue Share Payments are net of Customer's Minimum Monthly Payments, i.e., the month when the collections were received. If the Revenue Share Payment due to Accuray in any given month is less than the Minimum Monthly Payment, then Customer shall pay the Minimum Monthly Payment in that month only.

2.1.3.3. **Revenue Share and Minimum Monthly Payments.** Revenue Share Payments shall be reduced by the Minimum Monthly Payment made for that particular month in which the revenue was generated (i.e., the month when the collections were received). If the Revenue Share Payment due to Accuray in any given month is less than the Minimum Monthly Payment, then Customer shall pay Accuray the Minimum Monthly Payment in that month only. All Revenue Share Payments made by Customer to Accuray under this Agreement shall be applied to decrease the Buyout Price (as defined below) of the Accuray Deliverables provided hereunder.

2.1.3.4. **Global Billing.** In the event of any "global" billing, defined as any bill that requires a combined billing for the technical and professional components, the reimbursement will be allocated seventy-four percent (74%) to the Technical Fee and twenty-six percent (26%) to the Professional Fee.

2.1.3.5. **Pooled Rate.** In the event of that the payment to Customer for CyberKnife treatment services are unspecified and fall under a reimbursement payment methodology that is derived from a bundled, pooled, "hold back" or "capitated" arrangement, the reimbursement allocated to the technical and professional components of the CyberKnife treatment shall consist of a "Pooled Rate."

2.1.3.5.1. The Pooled Rate shall be calculated on each anniversary of the Commencement Date for the succeeding year.

2.1.3.5.2. For each year following such Commencement Date, the Pooled Rate shall be equal to the average reimbursement for CyberKnife treatment received by Customer from all payers of unbundled rates during the preceding year.

2.1.3.5.3. For the first year following the Commencement Date, the Pooled Rate will be an estimated rate, calculated ninety (90) days after the Commencement Date, to allow Customer time to negotiate rates with insurance carriers for that first year.

2.1.3.6. **Inpatient Rate.** In the event that a patient is treated with the Accuray Deliverables while being an inpatient at Customer when such services are rendered and the Customer is paid on a DRG-like basis, Customer agrees to pay Accuray according to the payment methodology for the Revenue Share Payments set forth in this Section 2.1.3.

2.2. **Payment Terms.** On or before the close of business on the third (3rd) business day of each month following the month that contains the Commencement Date (the "*Payment Due Date*"), however, no later than sixty (60) days following the Delivery Date, Customer shall pay to Accuray the greater of the Minimum Monthly Payment for the prior month (subject to Section 2.1.2, "Minimum Monthly Payments" above) or the Revenue Share Payment for the prior month. Customer will provide Accuray the previous month's billing and collection statements and any other relevant statements by the third (3rd) business day of each month, together with payments of the Minimum Monthly Payment or Revenue Share payments due to Accuray in that month. Customer shall pay for the Accuray Deliverables in accordance with the payment schedule set forth herein, provided that if installation or Acceptance (as defined below) is delayed by Customer for reasons not attributable to Accuray, the payment amount due upon Acceptance of the applicable Accuray Deliverable shall be due and payable the earlier of (i) 60 calendar days after delivery or (ii) Acceptance. If the delivery of an Accuray Deliverable is delayed by Customer for reasons not attributable to Accuray, Customer shall pay Accuray's reasonable cost to store such deliverable (including, but not limited to, insurance and demurrage charges) and amounts due on the estimated delivery date specified in Section D above for such deliverable shall become due and payable on such date. Accuray's performance hereunder is subject to Accuray's approval of Customer's credit.

2.3. **Invoices; Late Fees.** If Customer's internal payment processing procedure requires Customer to receive an invoice before paying amounts due hereunder, Customer shall request such invoice sufficiently in advance to make the payment in accordance with the payment schedule set forth herein. Customer shall pay Accuray a late fee of 2% on each payment made after the Payment Due Date, as well as interest at the rate of 1% per month (or, if lower, the maximum rate that as is permitted by applicable laws) from the Payment Due Date to the date it was received by Accuray. Customer shall pay Accuray's reasonable costs of collecting amounts due hereunder that are more than 30 days past due. Accuray may suspend its performance under this Agreement if payments are not made in accordance with the payment schedule set forth herein.

2.4. **Taxes.** All payments from Customer to Accuray under this Agreement are exclusive of taxes (e.g. sales, use, rental or similar taxes), duties, license or other fees, etc. If the use or possession of the Accuray Deliverables by Customer pursuant to this Agreement results in the imposition of any taxes, duties, or other fees, or requires the issuance of any permits or licenses, such taxes, duties or fees (other than taxes upon Accuray's net income) shall be paid, and such permits and licenses applied for and maintained, by Customer. Any sales, use, rental or similar tax computed on the basis of the payments and required to be collected by Accuray shall be paid by Customer with and in addition to the related payment.

2.5. **Best Efforts.** Customer agrees to use its best efforts to obtain prompt payment, from patients and third-party payers and at the rates lawfully available in the market or markets served by Customer, for services rendered by Customer utilizing any of the Accuray Deliverables.

Accuray's personnel who have knowledge and experience in obtaining reimbursement for such services may assist Customer in strategizing as to such reimbursement, but Customer shall be responsible for applying for and obtaining such payment and reimbursement. Nothing in this Section 2.5 is intended to suggest that either party will do anything inconsistent with the anti-fraud provisions of healthcare laws or regulations.

3. **Buyout.** On any anniversary date following one (1) year from the Commencement Date, Accuray will provide an exit strategy (the "*Buyout Option*") enabling Customer to buy out Accuray's interest in this program including the Accuray Deliverables at the predetermined price and terms available from Accuray, less an amount equal to all Revenue Share Payments made by Customer to Accuray under this Agreement as of the date that Customer exercises its Buyout Option, with sixty (60) days written notice. The amount that Customer must pay to Accuray in order to exercise its Buyout Option (the "*Buyout Price*") will depend upon the amount of Customer's initial Down Payment to Accuray and the year in which Customer exercises its Buyout Option. Customer acknowledges and agrees that its Buyout Price will correspond to the amount of Customer's Down Payment and the year in which Customer exercises its Buyout Option, less all Revenue Share Payments made by Customer to Accuray under this Agreement as of the date that Customer exercises its Buyout Option.

4. **Funding.** Customer understands that Accuray may obtain outside funding to invest in the Shared Ownership Program and may use the Accuray Deliverables and Customer's Per Patient Payments and other payments as collateral (or the title of the Accuray Deliverables may be transferred to a third party as part of a financing agreement). Customer agrees to provide reasonable information to allow this financing.

5. **Shipment.** Shipments are F.O.B. Destination. Customer shall inspect arriving shipments and report any visible damage or shortages to Accuray within 48 hours after delivery and any concealed damage within 10 days after delivery. If Customer does not report damage in accordance with the previous sentence, Customer shall bear the risk of loss with respect to such damage. For shipments outside the United States, Customer shall procure all necessary permits and licenses for such shipments and for compliance with any government regulations applicable at the destination. Delivery and installation dates set forth in Section D above, or otherwise agreed upon in writing by the parties are approximate. Accuray shall use reasonable efforts to meet all such delivery and installation dates but shall not be liable for delays.

6. **Installation.**

6.1. *Installation by Accuray*. Accuray will notify Customer approximately 90 calendar days prior to the scheduled delivery of the Accuray System to coordinate installation details. Installation will be performed by Accuray. Accuray will assemble and test the Accuray System. Operation of the Accuray System by Accuray, as necessary for completion of installation or acceptance tests, is subject to Customer providing adequate radiation shielding protection and other site preparations required for the safety and protection of personnel and the Accuray Deliverables. Upon completion of the installation, Accuray's representatives will demonstrate proper machine operation by performing Accuray's acceptance test procedure. For clarity, Accuray is not responsible for any commissioning of the Accuray System, including, but not limited to, any calibration or radiation surveys. Such commissioning shall be the sole responsibility of Customer.

6.2. *Site Preparation*. Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, and access to the room completed on the estimated delivery date and ready for installation of the Accuray System. Accuray will have no responsibility for any matter affecting or related to the adequacy of architectural design,

utility service design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers and other safety devices must be approved by an expert in the radiation field and shall be Customer's responsibility.

6.3. *Rigging and Unloading*. Accuray will locate and contract with a rigger or local licensed contractor to provide labor and rigging services necessary to unload the sub-base frame and the rest of the Accuray System from the transport vehicle and move the entire Accuray System to its final position under Accuray's supervision. Accuray shall be responsible for all standard rigging costs and expenses. An Accuray representative will monitor the movement, final positioning and connection of the Accuray System.

6.4. *Customer Representative*. Customer shall provide a representative who shall be present at all times during the installation and be capable of assisting where necessary. When no representative is present and assistance from Customer is not available when required, Accuray may suspend the installation until an appropriate Customer representative is made available consistently.

6.5. *Site Location*. Customer agrees that the Accuray System will remain at the site at which Accuray installs the System and will not be re-located without the prior written consent of Accuray, such consent to not be unreasonably withheld.

7. Training.

7.1. *Training*. Accuray will provide training for up to 5 Customer personnel (such personnel, collectively, the "*Initial Group*"). The Accuray training includes: (i) Technical Training, (ii) 1 Clinical Site Visit, and (iii) 1 on-site training session on the technical use of the Accuray System during first patient treatment, as each is described below. Customer shall be responsible for the travel and living expenses of all personnel sent for training. At the request of Customer, Accuray shall train additional Customer personnel beyond the Initial Group in accordance with Accuray's then current training price list and availability.

7.2. *Training Framework and Restrictions*. Due to logistical considerations, Accuray can only offer 1 Clinical Site Visit and 1 on-site training session during first patient treatment per Customer. As set forth below, Customer shall at a minimum send a Core Group (as defined in Section 7.3.1 below) for Technical Training prior to installation. However, because completion of the Technical Training is a prerequisite to the Clinical Site Visit and because completion of Technical Training and the Clinical Site Visit are prerequisites to the on-site training session during first patient treatment, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training before the Clinical Site Visit. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then only Customer's Core Group personnel who have completed the Technical Training shall be able to participate in the Clinical Site Visit and subsequent on-site training session during first patient treatment. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then the remaining members of Customer's Initial Group shall only be eligible for Technical Training and must complete such Technical Training within 60 days of the first patient treatment or the option for such Technical Training shall be deemed waived by Customer.

7.3. *Technical Training*

7.3.1. Technical Training will occur at Accuray's training facility in Sunnyvale, California or such other regional training facility as Accuray may establish. At a minimum, Customer must

include the following individuals in the first group that Customer sends to Technical Training:

(i) at least 1 medical physicist or the individual who will be responsible for commissioning the Accuray System and performing the quality assurance testing and treatment planning at Customer's site if such individual is not a physicist; and

(ii) at least 1 radiation oncologist or the individual who will be responsible for approving the prescription at Customer's site if such individual is not a radiation oncologist (such individuals, collectively, the "*Core Group*").

7.3.2. At a minimum, the Core Group must have completed the Technical Training prior to installation. Customer, in its discretion, may select the remaining members of Customer's Initial Group (for example, surgeons, specialists, radiation therapists and additional medical physicists and/or radiation oncologists), however, as described in Section 7.2 above, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training prior to the Clinical Site Visit.

7.4. *Clinical Site Visit*. Accuray will arrange for 1 Clinical Site Visit for Customer's Initial Group prior to installation. The Clinical Site Visit will take place at an operating CyberKnife Center in the United States. This Clinical Site Visit will involve clinical interaction with personnel at such center and an opportunity to witness actual patient treatment. Accuray will provide each customer with only 1 Clinical Site Visit and thus any members of Customer's Initial Group who wish to attend a Clinical Site Visit must all attend the same Clinical Site Visit. Completion of Technical Training is a prerequisite to participation in the Clinical Site Visit.

7.5. *On-site Training during First Patient Treatment*. Accuray shall provide an Accuray trainer to assist with the technical use of the Accuray System at Customer's site during first patient treatment. For clarity, proctoring and credentialing of physicians and medical staff is the responsibility of the Customer and should be performed separately from Accuray training according to the policies and procedures of the particular Customer or affiliated hospital, as applicable. Completion of the Technical Training and Clinical Site Visit by, at a minimum, the Core Group of Customer personnel are prerequisites for Accuray providing a trainer during the first patient treatment at Customer's site. Accuray shall have the right to reschedule the first patient treatment in the event that Customer's Core Group has not completed the Technical Training and the Clinical Site Visit prior to the first patient treatment. In addition, at the first patient treatment the Accuray trainer will only work with Customer personnel who have previously completed both Accuray's Technical Training and Clinical Site Visit.

7.6. *Credentials*. Customer shall determine and verify any necessary credentials of any personnel that Customer sends for training on the Accuray System. Accuray shall not be responsible for and will not in any way determine, assess or verify any necessary credentials of any personnel that Customer sends for training on the Accuray System.

7.7. *Qualification*. Accuray strongly recommends that any Customer personnel who will be involved with the Accuray System attend the training programs offered by Accuray, however, Customer shall have the sole responsibility for ensuring that any Customer personnel are appropriately trained with respect to any Accuray Deliverables and Accuray shall not be responsible for any such determinations.

8. **Service and Maintenance.** During the Term of this Agreement, except during the warranty year, as set forth in Section 16 (Warranty) below, the maintenance and repair of the Accuray Deliverables shall be provided pursuant to the terms and conditions of the Diamond Elite Preventive Maintenance and Service Agreement provided separately and Customer hereby agrees to execute such Diamond Elite Preventive Maintenance and Service contract if and when

Customer executes this Agreement. Notwithstanding the foregoing, Customer shall be responsible, and shall promptly pay Accuray, for any repair of the Accuray Deliverables, which is necessary as a result of any negligent or intentional failure of Customer, its employees or agents to operate the Accuray Deliverables in accordance with the User Manuals published by Accuray, a copy of which has been provided to Customer. Customer shall keep the User Manuals in a secure location and treat their contents as confidential.

9. Calibration and Local Requirements.

9.1. *Calibration*. Customer shall be solely responsible for all Accuray System commissioning and calibration. The dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Accuray System for patient treatment. Customer shall be responsible for quality assurance testing and calibrating the Accuray System regularly. Customer also shall be responsible for radiation surveys which may be required by applicable law or regulation or which may be necessary to establish that radiation does not exceed safe levels. Accuray has no responsibility for any such commissioning, quality assurance testing, calibration or radiation surveys.

9.2. *Pre-Requisite to First Patient Treatment*. Proper commissioning, calibration and quality assurance testing ("*QA*") of the Accuray System are necessary prerequisites to the first patient treatment. Accuray has the right to delay the first patient treatment in the event that Customer, in Accuray's sole opinion, does not have sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Accuray System.

9.3. *Local Requirements*. Customer shall be responsible for obtaining all permits and for meeting all requirements relating to state and local codes, registration, regulations and ordinances applicable to Customer's use of the Accuray System. Accuray has no responsibility for compliance by the Accuray Deliverables with such requirements.

10. Acceptance. "*Acceptance*" of the Accuray System shall occur upon the earlier of (i) completion by Accuray of its acceptance test procedure that demonstrates that the Accuray System substantially conforms to the Specifications or (ii) execution of Accuray's acceptance form by Customer. In no event shall Customer or its agents use the Accuray System (or any portion thereof) for any purpose before Acceptance thereof without the express written approval of Accuray. Customer shall indemnify and hold Accuray harmless from any such use.

11. Commencement Date. Customer believes that, by the date of Acceptance, it will have identified medically suitable patients to be treated using the Accuray System, and will schedule its first patient treatment as quickly as is possible and medically indicated after the date of Acceptance, after completing appropriate System Commissioning, Quality Assurance Testing and Calibration. The date of this first patient treatment shall be the "*Commencement Date."*

12. Customer Obligations.

12.1. **Reporting.** On or before the close of business on the third (3^{rd}) business day of each calendar month following the month that contains the Commencement Date, Customer shall report to Accuray all treatment services performed utilizing the Accuray Deliverables, all amounts billed therefor during the previous month, and all amounts collected during the previous month.

12.2. **Records and Audit.** Upon the request of Accuray, and subject to a Business Associate Agreement, if any, Customer shall provide to Accuray all documentation in its possession supporting calculation of any payment or payments. If and to the extent Accuray reasonably deems it necessary, Customer shall provide patient-by-patient information, redacted only to

the extent required by a Business Associate Agreement, if applicable. Accuray shall have the right to audit the books and records of Customer as they relate to the calculation of any payment or payments. Any audit disclosing any payment which is less than five percent (5%) lower than it should have been shall be at the expense of Accuray. Any audit disclosing any payment which is five percent (5%) or more lower than it should have been shall be at the expense of Customer. In the event that Accuray wishes to audit Customer's books and records, then Accuray and Customer will agree on a mutually acceptable date and time for such audit (the "*Audit Date*"). Customer acknowledges that once the Customer and Accuray have agreed upon the Audit Date, Accuray will incur expenses associated with the audit, for example travel to the site, preparation, auditor's time and expenses, etc. Should Customer not be prepared to proceed with the audit on the Audit Date, then, notwithstanding this Section 12.2, Customer shall promptly reimburse Accuray for all reasonable expenses incurred by Accuray including down time and travel expenses of the Accuray auditor.

12.3. **Financial Statements.** If requested in writing by Accuray, Customer will provide recent audited or certified financial statements within fourteen (14) calendar days of such request.

12.4. **Support Services and Equipment.** Customer shall, at its own expense, provide the supporting diagnostic imaging equipment and facilities, working capital, medical and technical staff necessary to provide both the professional and technical components of the surgery and therapy services, and billing and collections for the CyberKnife facility. Accuray shall have no obligation to provide personnel or services other than as explicitly provided in this Agreement.

12.5. **Operating Expenses.** All operating expenses, including by way of example and not by way of limitation, other staffing (direct costs and indirect and overhead expenses), administrative and medical supplies, general and administrative expenses, fiducials and other consumables, quality assurance equipment, and phantoms, shall be borne exclusively by Customer.

12.6. **Visits.** Customer acknowledges and agrees that Accuray may use Customer's CyberKnife site as a "show site" for potential customers of Accuray. All such visits to Customer's site shall be at reasonable times and subject to such reasonable restrictions as are agreed to between Customer and Accuray.

13. Patient Information.

13.1. *Data Collection*. Customer agrees to collect data (including a CyberKnife treatment log) with respect to patients treated by Customer utilizing the Accuray Deliverables as Accuray may reasonably request in support of regulatory approval applications, clinical studies, and promotion. Accordingly, Accuray may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("*Patient Information*"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR § 164.501.

13.2. *Compliance with HIPAA*. In performing any services hereunder, Accuray may receive from Customer Patient Information Customer shall identify to Accuray in writing all such information when Customer provides such information to Accuray, and Accuray shall use Patient Information so identified by Customer only as necessary to provide the services to Customer as set forth herein. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*").

13.3. *De-Identified Information*. Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray shall have all identifying patient information removed,

including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

14. Insurance.

14.1. For the Term of this Agreement, Accuray shall, at its sole cost and expense, maintain product liability and property damage insurance covering the Accuray Deliverables with the following minimum coverage: Basic liability and product liability of One Million Dollars ($1,000,000); equipment coverage at replacement value; and a liability umbrella policy of Three Million Dollars ($3,000,000). A certificate evidencing such coverage shall be provided by Accuray to Customer upon request by Customer.

14.2. Customer shall maintain comprehensive general liability insurance covering its services provided with the Accuray Deliverables and its premises where the Accuray Deliverables are located and shall require that each physician who provides treatment utilizing the Accuray Deliverables, and each other person who performs other medical services on patients referred for treatment with the Accuray Deliverables, shall maintain professional liability insurance, including, but not limited to, malpractice insurance, in such amounts and in such form as is customary for such persons in their respective professional fields as well as in Customer's community. Upon request by Accuray, Customer shall furnish Accuray evidence of such insurance coverage.

15. Intellectual Property Rights; Indemnity.

15.1. *Indemnity*. Accuray shall at its expense defend any action brought against Customer with respect to a claim by a third party that the design or manufacture of any Accuray Deliverable infringes any valid patent or other intellectual property right of the United States, and shall pay any damages awarded by a court arising from such claim, provided Customer gives Accuray prompt written notice of such claim and full authority, information and assistance in settling or defending such claim.

15.2. *Certain Remedies*. If a court judgment prohibits Customer's continued use of any Accuray Deliverable, or if at any time Accuray determines that any Accuray Deliverable may become subject to a cause of action for infringement, Accuray may at its expense either (i) procure a license to enable Customer to continue using such Accuracy Deliverable, (ii) replace such Accuray Deliverable with a non-infringing Accuray Deliverable, or (iii) remove such Accuray Deliverable and refund a pro-rated portion of the Purchase Price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance (i.e., removal of the Accuray Deliverable at the end of the first year after Acceptance would result in a refund of 80% of the Purchase Price). Accuray shall have no liability hereunder with respect to any claims settled by Customer without Accuray's prior written consent.

15.3. *Exclusion*. Accuray excludes from any liability hereunder, and Customer shall indemnify and hold Accuray harmless from and against any expense, loss or liability resulting from claimed infringement of any third party intellectual property rights: (i) arising from the use of an Accuray Deliverable other than in accordance with the Specifications, (ii) based on the combination of equipment, processes, programming applications or materials not furnished by Accuray with the Accuray Deliverables, (iii) arising out of compliance by Accuray with Customer's designs, specifications or instructions, or (iv) damages incurred as a result of Customer's continued use of an Accuray Deliverable after Accuray has recommended in writing that Customer suspend such use. This Section 15 states Accuray's entire liability for

any claim based upon or related to any alleged infringement by an Accuray Deliverable of intellectual property right.

16. Warranty.

16.1. *Warranty*. Accuray warrants that (i) the hardware components of the Accuray Deliverables will be free from defects in material and workmanship and (ii) the hardware and software components of the Accuray Deliverables will operate substantially in accordance with the Specifications, in each case for a period of 1 year from the date of Acceptance, but not to exceed 2 years from date of delivery ("*Warranty Period*"). Any service with respect to Accuray Deliverables provided by Accuray after the Warranty Period shall be provided in accordance with the terms of a Service Contract executed by the parties.

16.2. *Warranty Remedy*. If Customer notifies Accuray during the Warranty Period of a defect in an Accuray Deliverable that causes such deliverable to fail to conform to the foregoing warranty, Accuray shall at its option either repair or replace the defective deliverable, or, if in Accuray's opinion such repair or replacement is not commercially reasonable, Accuray shall refund a pro-rated portion of the price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance. This Section 16.2 sets forth Customer's sole and exclusive remedies with respect to a breach of the warranty specified in Section 16.1.

16.3. *Conservation of Materials*. In the interest of conservation of scarce materials, and of efficient utilization of high value parts, the Accuray Deliverables may contain re-manufactured parts. Such parts are subject to the same standards of quality control applied to other parts and are covered by the warranty in this Section 16.

16.4. *Scope of Warranty*. The warranty services described in this Section 16 shall not apply to defects or non-conformities caused by: (i) abuse, accident, misuse or neglect of an Accuray Deliverable; (ii) modification of an Accuray Deliverable (including any software therein) without Accuray's express written authorization; (iii) use in an operating environment other than the operating environment described in the Specifications; or (iv) any component of an Accuray Deliverable that has been superseded by a update made available to Customer without charge by Accuray. In-warranty repair or replaced parts are warranted only for the unexpired portion of the original warranty period.

16.5. *OTHER WARRANTIES*. EXCEPT AS SET FORTH IN THIS SECTION 16, ACCURAY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

17. Mutual Indemnity. If it is determined by a court in accordance with applicable law that the negligence of a party (the "*Responsible Party*"), its employees or agents causes damage or injury to a third party, the Responsible Party shall pay the other party for any damages awarded by a court or agreed to by the Responsible Party in a settlement arising from such claims to the extent such damages reflect the Responsible Party's relative fault therefor. Notwithstanding the foregoing, Accuray shall have no responsibility whatsoever for, and Customer shall indemnify and hold Accuray harmless from, all damage or injury to third parties which (i) results from the use, operation or service of any Accuray Deliverable by other than Accuray personnel prior to Acceptance and completion of the radiation survey by Customer, (ii) results from or relates to any use, operation or service of any Accuray Deliverable by a party not authorized to perform such service by Accuray, or (iii) any use by Customer or its agents of an Accuray Deliverable contrary to any written warning or instruction given by Accuray to Customer.

18. **Damages.** IN NO EVENT SHALL ACCURAY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCURAY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE PAYMENT, LESS ANY APPLICABLE INTEREST, RECEIVED BY ACCURAY FOR THE ACCURAY DELIVERABLE RESULTING IN THE LOSS OR DAMAGE CLAIMED.

19. **Intellectual Property Ownership and License.** Accuray and its licensors retain all intellectual property rights in the Accuray Deliverables. Accuray hereby grants Customer a nonexclusive, non-transferable, royalty-free right to use the software provided in connection with the Accuray Deliverables only in machine readable form and only in combination with the Accuray Deliverable with which such software is provided. No such software shall be copied or decompiled in whole or in part by Customer, and Customer shall not disclose or provide any such software, or any portion thereof, to any third party. All rights in intellectual property not expressly granted hereunder are reserved by the owner of such intellectual property.

20. **Trademarks.** Accuray is the owner of the trademark CyberKnife® and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

21. **Term.**

21.1. The duration of this Agreement (the "*Term*") is for the earlier of: (a) five (5) years from the Commencement Date, (b) the effective date upon which Customer exercises its Buyout option in accordance with Section 3 (Buyout), (c) termination of this Agreement in connection with a breach of this Agreement as permitted pursuant to Section 25, or (d) Customer's total Revenue Share Payments to Accuray equal the full amount of the "Remaining System Price" set forth in Section D.1.3 above. At the expiration of the Term, Customer may choose to:

(i) buyout the Accuray Deliverables in accordance with Section 3 (Buyout),

(ii) return the Accuray Deliverables to Accuray, or

(iii) extend the Term of this Agreement if agreed to by Accuray, provided, however, that nothing contained herein shall in any way obligate Accuray to extend the Term of this Agreement at the expiration of such Term.

21.2. **Return of Accuray Deliverables.** In the event that Customer elects to return the Accuray Deliverables to Accuray at the end of the Term, as described in Section 21.1(b) above, Customer acknowledges and agrees that the Down Payment is made in consideration of lower Minimum Monthly Payments and a lower interest rate on the "Remaining System Price" over the Term, and as such Customer is not entitled to any return of the Down Payment. Furthermore, Customer shall pay for the costs of dismantling and shipping the Accuray Deliverables to Accuray. The Accuray Deliverables shall be returned to Accuray in the same condition, less normal wear and tear, as when delivered to Customer. The costs of any repairs or maintenance (other than that assumed by Accuray pursuant the Diamond Elite Service Agreement) required to return the condition of the Accuray Deliverables to an appropriate condition shall be borne by Customer and all such repair or maintenance shall be completed prior to return of the Accuray Deliverables to Accuray.

21.3. **Final Payment.** Customer will pay Accuray the amount due for all services performed using the Accuray Deliverables through the end of the Term, calculated based on expected billings and expected collections. Payment will be made within thirty (30) days. The difference between the estimate paid and the actual amount (based on actual collections and Minimum Monthly & Revenue Share Payments) will be calculated and paid (by the appropriate party) within thirty (30) days of the end of each subsequent calendar quarter.

22. Ownership, Title and Security Interest.

22.1. Until (i) Accuray has been paid in full for the applicable Buyout price of all Accuray Deliverables provided to Customer, in addition to any and all additional payments due from Customer to Accuray hereunder, in the event that Customer elects to exercise its Buyout option or (ii) Customer's total Revenue Share Payments to Accuray equal the full amount of the "Remaining System Price" set forth in Section D.1.3 above, all Accuray Deliverables are and shall remain the sole exclusive (personal) property of Accuray (or such leasing company or other entity to which Accuray elects to transfer title in connection with the financing of the Accuray Deliverables and the monthly income stream from such items) and at all times be and remain personal property notwithstanding that it or any part of it may be, or hereafter become, in any manner affixed or attached to real property or any building thereon.

22.2. Customer hereby grants to Accuray and Accuray retains title to all Accuray Deliverables delivered to Customer, and a security interest in all proceeds generated therefrom, for the purpose of securing payment of any and all indebtedness of Customer to Accuray arising out of the placement of the Accuray Deliverables for the purpose of securing payment for such deliverables. Customer authorizes Accuray to file, and shall execute upon Accuray's request, documents and related filings and recordings thereof as necessary for Accuray to perfect the foregoing security interest under the Uniform Commercial Code or any similar domestic or foreign laws and agrees) to help Accuray secure financing from a financing entity using the Accuray Deliverables and Customer's obligations under this Agreement as collateral, it being understood that such financing will not require any obligations from Customer other than those required in this Agreement. Customer shall maintain the Accuray Deliverables in good condition and keep such deliverables free of any liens until payment is made in full. All security interests shall be released once Accuray has received either (i) the full amount of the "Remaining System Price" set forth in Section D.1.3 above if Customer's total Revenue Share Payments to Accuray equal the full amount of the "Remaining System Price" or (ii) the Buyout price for the Accuray Deliverables if Customer elects to exercise its Buyout Option, as well as any and all payments owed hereunder from Customer to Accuray.

23. **Survival.** The parties' obligations under this Agreement shall cease upon expiration of the Term or other termination of this Agreement. Notwithstanding the foregoing, the parties' obligations set forth in Sections 2.3, 2.4 12.1, 12.6, 13, 14, 15, 16.5, 17, 18, 19, 21.2, 21.3, 22, 26, 27, 28, 32, 33, 34, 35 and 36 of this Agreement shall survive such termination.

24. **Breach.** The occurrence of any of the following shall constitute an event of breach hereunder ("*Event of Breach*"):

24.1. **Default in Payments.** If Customer shall fail to pay all or any portion of any payment, when and as the same shall come due and payable, whether at the due date thereof or by acceleration, or shall fail to make any other payment required by this Agreement, and such failure continues for a period of ten (10) business days after receipt of written notice; or

24.2. **Other Breach.** If either party shall breach or shall be in default under any of the terms and conditions of this Agreement and such breach or default shall not be cured within thirty (30) days after receipt of written notice with respect thereto from the non-breaching party; or

24.3. **Bankruptcy, Insolvency, etc.** If either party is subjected to any proceeding under bankruptcy or equivalent laws or the Bankruptcy Act or is insolvent or if any substantial part of a party's property is subjected to any levy, seizure, assignment, application, or sale for or by any creditor or government agency; or

24.4. **Licenses.** If any license or other required government approval of Customer is at any time suspended, terminated, revoked or limited in any manner that has a material adverse effect on the use of the System.

25. **Remedies for Breach.** If any Event of Breach shall occur and be continuing, *the non-breaching party may*, at its option, exercise any one or more of the rights and remedies as follows:

25.1. Accuray or Customer may terminate this Agreement.

25.2. Accuray or Customer may take any action at law or in equity to collect any or all amounts then due and thereafter to become due under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Accuray or Customer under this Agreement.

25.3. Accuray may accelerate and declare to be immediately payable the entire balance of all payments and all other amounts due and owing under this Agreement plus the sum of all payments and other amounts reasonably likely, based upon the previous six (6) months' payments, to become payable during the balance of the Term of this Agreement.

25.4. Accuray may, directly or by its agent, and without notice or liability or legal process, enter upon any premises where the Accuray Deliverables may be located, take possession of and remove the Accuray Deliverables (any damages occasioned by such taking of possession and removal being waived by Customer).

26. **Compliance with Law.** Customer and Accuray shall each do all acts necessary to comply with, and shall cause their respective officers, directors, employees, contractors and agents to comply with, any and all federal, state, and local laws and regulations applicable to each of them. This provision includes but is not limited to legal requirements of privacy of patient-specific records, which is discussed more specifically in Section 13 (Patient Information).

27. **Change of Law with Adverse Circumstances.**

27.1. **Change of Law.** As used herein, "*Change of Law*" shall mean: (i) any new legislation enacted by the federal or any state government; (ii) any third-party payer's or any governmental agency's (including but not limited to the Internal Revenue Service, the Office of the Inspector General of the U.S. Department of Health and Human Services, and comparable state agencies with jurisdiction over the subject matter of this Agreement), passage, issuance or promulgation of any new rule, regulation or guideline or interpretation of an existing law, rule, regulation or guideline; or (iii) any judicial or administrative body's issuance of any order or decree.

27.2. **Adverse Consequences.** As used herein, "*Adverse Consequence*" shall mean a Change of Law that prohibits, invalidates, renders unenforceable or otherwise materially adversely affects a party's rights or obligations hereunder.

27.3. **Good Faith Revision.** Notwithstanding any other provision of this Agreement, if during the term hereof any Change of Law results in an Adverse Consequence, Customer and Accuray shall make good faith efforts to revise this Agreement in order to avoid or mitigate such Adverse Consequence(s). Where such Change of Law results in any particular provision of this Agreement becoming invalid or unenforceable, the parties agree to first attempt to revise the Agreement so that the remaining provisions shall be enforceable and binding except where

severance of the invalid or unenforceable provision substantially changes the rights and duties of the parties.

27.4. **Termination.** If the parties are unable to revise this Agreement so as to avoid such Adverse Consequence(s) following sixty (60) days of good faith negotiation, and severance of the invalid or unenforceable provision substantially changes the rights and duties of the parties, then the party adversely affected may terminate this Agreement upon written notice to the other party.

28. **Confidentiality.** All drawings, designs, specifications, manuals and software and other non-public information furnished to the Customer by Accuray hereunder shall remain the confidential and proprietary property of Accuray ("*Confidential Information*"). All such information, except as may be found in the public domain, shall be held in confidence by Customer and shall not be disclosed by Customer to any third parties or used by Customer other than in its operation of the Accuray Deliverables in accordance with the Specifications.

29. **Press Releases.** Accuray and Customer shall each have the right to announce the installation to the press and shall provide copies of any press release to the other party so that they have a reasonable chance to provide input on the announcement.

30. **Cancellations.** All payments made hereunder are non-refundable and no order accepted by Accuray may be canceled by Customer without Accuray's prior written consent. If Customer requests cancellation of any order and Accuray consents to such request, Customer agrees to pay Accuray a charge determined by Accuray to cover the reasonable costs of order processing, handling, re-testing, shipping, storage, repackaging and similar activities incurred by Accuray in connection with such cancellation.

31. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent, except that Accuray may assign this Agreement without Customer's consent to an affiliate and either party may assign this Agreement without the other party's consent to a successor or acquirer in connection with a merger or acquisition, or the sale of all or substantially all of such party's assets or the sale of that portion of such party's business to which this Agreement relates, upon written notice; provided that any party to which Customer proposes assigning this Agreement must meet Accuray's standard creditworthiness requirements. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. Any attempted assignment in violation of this Section 31 shall be null and void.

32. **Dispute Resolution.** Any dispute between Accuray and Customer arising from or related to this Agreement, excluding disputes regarding payment or Customer's unauthorized use or disclosure of Accuray Confidential Information or intellectual property, shall be settled as follows. The party initiating the dispute shall provide written notification to the other party identifying in detail the nature of the dispute. The other party shall respond in writing to the notification within 30 calendar days from the date of receipt of the notification. The party initiating the dispute shall have an additional 30 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved within the foregoing 30-day period, the parties shall escalate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. If the dispute is not resolved within 15 calendar days after escalation to the President and Chief Executive Officer as described above, then either party may pursue resolution by any means available at law or equity.

33. **Notices.** All notices required or permitted under this Agreement shall be in writing and if delivered in person, effective immediately, if delivered by reputable national or international overnight delivery service, effective 2 business days after deposit with carrier, or if delivered by

registered or certified mail, postage prepaid with return receipt requested, effective 5 business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this section.

To Accuray:	**To Customer:**
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 Copy to: General Counsel	

34. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, acts of God, accident, failure or breakdown of components necessary for order completion; subcontractor or supplier caused delays; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

35. **Governing Law.** The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the United States and the State of California without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction. No action, regardless of form, arising out of or related to any Accuray Deliverable may be brought by Customer more than 1 year after Customer has or should have become aware of the cause of action.

36. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

37. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

38. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

39. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

40. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. In the event of a conflict or inconsistency between the terms stated in a purchase order or other similar document and this Agreement, the terms of this Agreement shall govern.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, thereunto duly authorized. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED	**CUSTOMER**
By: _____	By: _____
Print Name: Robert E. McNamara	Print Name: _____
Title: Senior Vice President & Chief Financial Officer	Title: _____
Date: _____	Date: _____

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

By: _____
Darren J. Milliken
General Counsel

Date: _____

Please make sure that you have signed the Diamond Elite Preventive Maintenance and Service Agreement provided separately. Please attach payment to this signed Agreement and forward to:

Accuray Incorporated
ATTN: Contracts Administration
1310 Chesapeake Terrace
Sunnyvale, CA 94089
T. 408.716.4600
F. 408.716.4620

SIGNATURE PAGE TO ACCURAY CYBERKNIFE G4 SHARED OWNERSHIP AGREEMENT

QuickLinks

CYBERKNIFE® G4 SHARED OWNERSHIP AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.43

CYBERKNIFE G4 PLACEMENT AGREEMENT

ACCURAY INCORPORATED—[NAME OF INSTITUTION]

This CyberKnife® G4 Placement Agreement ("Agreement") is made and entered into as of , 2006 ("Effective Date") by and between Accuray Incorporated, a California corporation, with offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 ("Accuray") and , located at ("Institution").

RECITALS

Accuray is the developer and manufacturer of the CyberKnife 4th Generation Robotic Radiosurgery System more fully described in Schedule 1 ("CyberKnife G4" or "Equipment").

Accuray's mission is to enable full-body radiosurgery using image-guided robotics. We design, develop and sell the CyberKnife G4, an FDA-cleared image-guided robotic radiosurgery system used to provide treatment planning and image-guided stereotactic radiosurgery (or precision radiotherapy) for lesions, tumors and conditions anywhere in the body where radiation treatment is indicated. Radiosurgery combines the proven capability and non-invasive nature of radiation with the precision and effectiveness of conventional surgery, thereby making it possible to non-invasively destroy solid tumors. We believe that the integration of our proprietary image-guidance system with robotic delivery capability establishes the CyberKnife G4 as the next generation of radiosurgery systems.

Institution wishes to have the use of a CyberKnife G4 in order to have the capability to provide full-body stereotactic radiosurgery/radiotherapy treatments for patients; and,

Institution and Accuray agree to enter into an agreement to share the cost of acquiring a CyberKnife G4, whereby Accuray is willing to provide the Equipment to Institution and Institution is willing to provide appropriate medical and surgical services utilizing the Equipment on the terms and conditions set forth herein.

This Agreement proposal shall expire if not signed and received by Accuray by , 2006.

AGREEMENT TERMS

For and in consideration of the mutual covenants and agreements contained herein and of other good and valuable consideration, Accuray and Institution, intending to be legally bound, hereby agree as follows:

1. DELIVERY AND INSTALLATION OF EQUIPMENT

1.1. **Delivery Date.** Delivery of the Equipment is scheduled to be on or before ("Delivery Date"). Both Institution and Accuray will use their best efforts to meet Delivery Date.

1.2. **Site Preparation.** As set forth below, Institution agrees to prepare a site for the Equipment meeting the specifications that Accuray will provide, and which Accuray will be able to inspect at least 30 days before delivery.

1.2.1. Institution, at its expense, shall prepare a site for the Equipment which meets all of the requirements of the Site Planning Manual provided by Accuray.

1.2.2. Institution shall also arrange for and provide at its sole expense all unloading, rigging and lifting necessary for and incidental to installation of the Equipment.

1.2.3. Institution will complete the site preparation and be prepared to do the unloading, rigging, and lifting work by the Delivery Date.

1.3. **Failure to Complete Site Preparation**

1.3.1. **No Monetary Penalty.** There are no monetary penalties associated with Institution's failure to have this preparatory work completed by the Delivery Date, however, Institution understands that Accuray's compliance with the estimated timetable contained in this Agreement depends upon Institution's timely completion of this work. Institution agrees to keep Accuray informed of its progress with respect to its work under this Section.

1.3.2. **Storage.** If the site is not ready for installation by the Delivery Date, Institution will provide, and bear the cost of, suitable space for storage of the Equipment until the site is ready for Equipment installation.

1.3.3. **Significant Delay.** Should this site preparation work by Institution be significantly delayed, Institution understands that it may lose its place in Accuray's production and installation schedule and Accuray may reschedule the Delivery Date, giving consideration to all of its customer commitments.

1.3.4. **Option to Cancel.** Should Institution's site preparation work not be commenced within three months of the date of this Agreement and thereafter pursued diligently to completion, Institution understands that Accuray may, at its sole option, cancel this Agreement.

1.4. **Shipment.** Accuray and Institution will share the cost of shipment of the Equipment, Institution will arrange and pay for the unloading, rigging and lifting of the Equipment, and Accuray will be responsible for the complete installation of the Equipment.

1.5. **Delivery, Installation and Acceptance**

1.5.1. **Delivery.** Provided that Institution has completed the site preparation work described in the Section 1.2 in a timely manner, Accuray shall complete delivery and installation of the Equipment at the site within thirty (30) days after the agreed Delivery Date. Upon delivery, Accuray will invoice and Institution shall reimburse Accuray for one-half of Accuray's cost of delivering the Equipment to Institution's site.

1.5.2. **Early Delivery.** Accuray may deliver the Equipment before the scheduled delivery date if a manufacturing slot and installation team becomes available, and the parties agree.

1.5.3. **Acceptance.** Upon installation as described in Section 1.5.1, Accuray shall demonstrate to Institution that the Equipment meets Accuray's Acceptance Test Standards, at which point the Equipment shall be deemed to have been accepted by Institution ("Acceptance"). Institution shall sign Accuray's acceptance form upon successful demonstration that the Equipment meets Accuray's Acceptance Test Standards, signature not to be unreasonably withheld. Notwithstanding the foregoing, any use of the Equipment by Institution, its agents, employees or licensees, for any purpose after delivery and before acceptance thereof, without the express written approval of Accuray, shall constitute acceptance of the Equipment by Institution.

1.5.4. **Failure by Accuray.** Accuray's failure to meet the delivery, installation or acceptance date set forth in this paragraph for reasons beyond its control shall not provide Institution with a right to terminate this Agreement.

1.6. **Commencement Date.** Institution believes that, by the date of Acceptance, it will have identified medically suitable patients to be treated using the Equipment, and will schedule its

first patient treatment as quickly as is possible and medically indicated after the date of Acceptance, after completing appropriate System Commissioning, Quality Assurance Testing and Calibration. The date of this first patient treatment shall be the "Commencement Date."

2. OWNERSHIP

2.1. Unless and until Institution purchases the Equipment as expressly permitted in this Agreement, the Equipment is and shall at all times be and remain the sole exclusive (personal) property of Accuray (or such leasing company or other entity to which Accuray elects to transfer title in connection with the financing of the Equipment and the monthly income stream from the Equipment) and at all times be and remain personal property notwithstanding that it or any part of it may be, or hereafter become, in any manner affixed or attached to real property or any building thereon. Institution agrees to provide financials, acknowledgments and other information that Accuray may reasonably request to help Accuray secure financing from a financing entity, using the Equipment and the obligations under this Agreement as collateral, it being understood that such financing will not require any obligations from Institution other than those required in this Agreement. Institution agrees that it will furnish or record such owner's, mortgagee's, landlord's, or other disclaimers, waivers, or consents and such filings under the Uniform Commercial Code as may be necessary or reasonably requested by Accuray in order to give full effect to the intent of the provisions of this Section 2.

3. TRAINING

3.1. **Institution Personnel.** Institution will identify up to ten (10) personnel for training by Accuray, and subsequent operation of the Equipment. Such personnel may include, for example, Surgeons, Radiation Oncologists, Physicists, Radiation Therapists, RN/Scheduler, Dosimetrists, and Cancer Center Director for training. Additionally, Institution shall identify a "Core Group" of five (5) personnel which shall include at least one (1) Surgeon, one (1) Radiation Oncologist, one (1) Medical Physicist and one (1) Radiation Therapist.

3.2. **Training Elements.** Training as provided by Accuray shall include:

3.2.1. Technical training for all ten (10) personnel.

3.2.2. One (1) Clinical Site Visit for the Core Group.

3.2.3. One (1) On-Site "Go Live" Training Session.

3.3. **Training Terms.** Accuray will provide training for Institution as follows:

3.3.1. Accuray will provide Technical Training for the Core Group prior to installation. The remaining personnel will receive Technical Training no later than six (6) months following Acceptance.

3.3.2. Accuray will arrange for one (1) Clinical Site Visit for the five (5) person Core Group prior to installation. This Clinical Site Visit will involve clinical interaction with personnel at an operating CyberKnife center and an opportunity to witness actual patient treatment. Completion of Technical Training is a prerequisite to participation in the Clinical Site Visit.

3.3.3. Accuray will provide On Site Training for three (3) days by Accuray training personnel during the initial patient treatment or "Go Live." However, proctoring and credentialing of physicians and medical staff is the responsibility of the Institution and should be performed separately from Accuray training according to the policies and procedures of

the particular Institution or affiliated hospital as applicable. No cost will be incurred by Institution for this On Site Training.

3.3.4. Accuray agrees to pay the training tuition for Technical Training of up to ten (10) people. Cost of training for additional personnel will be according to the then current training price list. The training price list may be updated from time to time, in Accuray's sole discretion.

3.3.5. Technical Training will occur at Accuray's Training Facility in Sunnyvale, California or other regional training facility as Accuray may establish. The Clinical Site Visit will take place at an existing, operating CyberKnife Center in the United States. Institution shall be responsible for the travel and living expenses of all personnel sent for training.

3.3.6. Institution also agrees to provide on-site training to surgeons who may refer patients at their expense.

3.3.7. Institution agrees to send all personnel for training according to the terms outlined herein.

3.3.8. Institution acknowledges and agrees that completion of the Technical Training and Clinical Site Visit by the Core Group are prerequisites for the On Site Training during the initial patient treatment. As such, Accuray shall have the right to reschedule the On Site Training during the initial patient treatment in the event that Institution has not completed the Technical Training and the Clinical Site Visit in a timely manner prior to the initial patient treatment.

3.4. **Installation.** During the installation of the Equipment, Institution shall make available all qualified personnel who shall be needed or desirable for the operation of the Equipment.

3.5. **Subsequent Training.** Any subsequent training of new or replacement Institution personnel shall be purchased by Institution at prices set forth in Accuray's then current training price list.

3.6. **Training On Newly Acquired Upgrades.** Training for newly acquired Upgrades will be provided for Institution's core CyberKnife personnel, up to five (5) people, free of charge. Subsequent training for additional users will be provided per the then current training list price.

4. USE OF EQUIPMENT

4.1. **Intent.** Institution will use the Equipment to perform stereotactic radiosurgery and radiotherapy upon patients, and will use its best marketing and other efforts to maximize utilization of the Equipment when medically indicated. All such surgery and therapy shall be performed consistent with Accuray's published literature relating to the use and capabilities of the Equipment provided to Institution from time to time.

4.2. **Patient Volumes.** Institution estimates that it will generate the annual volumes using the Equipment which are set forth in Schedule 2. While these annual volumes are a good faith estimates and not contractual requirements, it is based in part upon these anticipated patient volumes that Accuray is willing to place the Equipment at Institution's site.

4.3. **Marketing.** Institution shall be solely responsible for any marketing of the treatment services to be provided utilizing the Equipment at its site. Accuray is involved in marketing CyberKnife equipment generally to care providers, payers, and patients as it believes appropriate from time to time. If requested by Institution, Accuray shall support Institution's marketing program by, among other things, participating in ongoing education of physicians, surgeons

and other personnel involved in treating patients with the Equipment, contributing text, graphic and photographic material, and other assistance. Accuray will assign a regional Account Manager whose responsibilities will include Institution and who will assist Institution with education, marketing efforts, and information on reimbursement trends. Nothing in this Section 4.3 shall be deemed to require either Accuray or Institution to engage in any activity which its counsel reasonably believes would violate applicable laws, including but not limited to the Stark and Anti-Kickback Laws, or regulations.

4.4. **Institution's Efforts.** Institution shall provide the supporting diagnostic imaging equipment and facilities, working capital, medical and technical staff necessary to provide both the professional and technical components of the surgery and therapy services, and billing and collections for the CyberKnife facility. Accuray shall have no obligation to provide personnel or services other than as explicitly provided in this Agreement.

4.5. **Compliance with Laws.** With the exception of US FDA clearance or approval of those applications or indications for use of the CyberKnife G4 which Accuray obtains from time to time, compliance with all other federal, state and local laws, rules, and regulations, public and private, (including licensure requirements, institutional review board/ethics committee approvals, certificates of need, if applicable, facility construction, radiation shielding standards, commissioning requirements, etc.) applicable to Institution's utilization of the Equipment shall be the sole responsibility of Institution.

4.6. **Data Collection.** Institution agrees to collect data (including a CyberKnife G4 Treatment Log) with respect to patients treated by Institution utilizing the Equipment as Accuray may reasonably request in support of regulatory approval applications, clinical studies, and promotion. Accuray agrees to not request patient identifying information unless approved in advance by Institution and the patient. Except as legally allowed, Accuray will not release any confidential patient information. Both Institution and Accuray agree to abide by all federal, state, and local laws regarding the treatment of patient information, in particular the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

4.7. **Operating Expenses.** All operating expenses other than those described in this section, including by way of example and not by way of limitation, other staffing (direct costs and indirect and overhead expenses), administrative and medical supplies, general and administrative expenses, fiducials and other consumables, quality assurance equipment, and phantoms, shall be borne exclusively by Institution.

5. VISITS

5.1. Institution acknowledges and agrees that Accuray may use Institution's CyberKnife G4 site as a "show site" for potential customers of Accuray. All such visits to Institution's site shall be at reasonable times and subject to such reasonable restrictions as are agreed to between Institution and Accuray.

6. SERVICE AND MAINTENANCE

6.1. **Service and Maintenance Terms.** During the Term of this Agreement, as defined below in Section 10.1, Accuray shall be solely responsible for the maintenance and repair of the Equipment as follows:

6.1.1. Accuray agrees to perform preventive maintenance and basic service on the Equipment during the Term according to Accuray's standard preventive maintenance schedule, which is currently every quarter.

6.1.2. Accuray will make reasonable efforts to perform all "on-site" service work around scheduled treatment times (early mornings, nights and weekends, if possible).

6.1.3. Accuray shall provide Institution with a 24-hours-a-day, 7-days-a-week Technical Support number. Accuray, directly or remotely as the situation requires, either with its own personnel or through contractors, shall initially respond telephonically within two (2) hours of receipt of a call for service. If the problem cannot be resolved remotely, Accuray will respond on-site within 12 hours of a determination that on-site service is required.

6.1.4. All parts are covered under this Agreement.

6.1.5. Accuray shall only be responsible for the Accuray supplied equipment and shall exclude interface with other networks, imaging systems, and site infrastructure such as hospital utilities, air handling system, etc.

6.2. **Service and Maintenance Fees**

6.2.1. Accuray will provide preventive maintenance and timely equipment failure repairs free of charge, as long as Institution generates the Best Effort Basic Service Case Volumes listed in Schedule 2.

6.2.2. If, at the end of any given year, Institution does not meet its Best Effort Basic Service Case Volumes for that year, then Accuray will invoice Institution at the end of that year for Accuray's then current basic service rates, currently $275,000 per year. Accuray gives Institution the option to buy case volumes for 50% of the previous year's average technical fee collected per case/patient to reach Best Effort Basic Service Case Volumes.

6.3. **Notice.** Institution shall notify Accuray of any service requirements or issues within a reasonable amount of time.

6.4. **Institution's Obligations.**

6.4.1. **System Quality Assurance Testing**

6.4.1.1. The maintenance and support services provided by Accuray under this Agreement do not include any Equipment Quality Assurance Testing ("QA"). Equipment commissioning and QA are the sole responsibility of Institution, and Institution is advised to perform QA on a regular and ongoing basis. In addition, Institution is required to maintain up-to-date QA logs. If Institution fails to perform the appropriate QA of the Equipment, and to record such QA in the appropriate logs, Accuray, reserves the right to refuse to service the Equipment until Institution has brought such QA logs up to date.

6.4.1.2. Prior to performing any scheduled service or preventive maintenance on the Equipment, Accuray will review Institution's QA logs, and if such logs are not up-to-date, Accuray may refuse to service the Equipment. In the event that the requested service is necessary to bring the Equipment to a point where QA can be performed, Accuray will proceed with the service only after Institution signs a written acknowledgement that QA is Institution's sole responsibility and that appropriate QA will be performed prior to conducting any patient treatments. Additional costs that may be incurred as a result of Institution's failure to perform QA testing shall be the sole responsibility of Institution.

6.4.1.3. Institution acknowledges and agrees that proper Equipment commissioning and QA are necessary prerequisites to the first patient treatment and that Accuray has the right to delay the first patient treatment in the event that Institution, in

Accuray's sole opinion, does not have sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Equipment prior to first patient treatment.

6.4.2. Institution shall be responsible for and shall promptly pay Accuray for any repair of the Equipment which is necessary as a result of any negligent or intentional failure of Institution, its employees or agents to operate the Equipment in accordance with the User Manuals published by Accuray, a copy of which has been provided to Institution. Institution shall keep the User Manuals in a secure location and treat their contents as confidential.

6.5. **Uptime**

6.5.1. **Definitions.** Uptime shall mean any time that the Equipment is not down. Down Equipment means that a patient cannot be treated due to an actual malfunction of the Equipment and that the Equipment is immediately available for an Accuray service engineer to work on it ("Downtime").

6.5.2. **Guarantee.** Accuray warrants that the Equipment shall have an Uptime percentage of at least 95% of normal treatment hours on an annual basis during the Term of this Agreement and, in the event Institution purchases the Equipment as permitted herein, for any period during which the Equipment is covered by an Accuray Service Plan. Normal treatment hours shall be from 8:00 AM to 5:00 PM local time Monday through Friday (excluding Federal holidays). The first 12-month period will start as of the Commencement Date.

6.5.3. **Calculation.** Downtime will be calculated from the time a down Equipment call is received by Accuray to the time of repair, counting normal treatment hours during the month. The Equipment will be calculated as up when the Equipment repair has been completed and the Equipment is available for treatment during the normal treatment hours, whether or not patients are scheduled for treatment. Scheduled preventive maintenance, Equipment upgrades, and time that the Equipment is unavailable as a result of something beyond Accuray's control, including without limitation (i) Institution's use of the Equipment for purposes other than its intended and authorized purposes, (ii) the negligence of Institution, (iii) the failure of Institution to operate the Equipment in accordance with the Operations Manual, (iv) use by untrained operators, (v) eStops, power outages or the like or (vi) the negligence of any party other than Accuray will be calculated as Uptime.

6.5.4. **Reports.** Institution is responsible for recording and reporting Downtime to Accuray. Reports for the previous month's Downtime shall be provided to Accuray on or before the close of business on the third (3rd) business day of each month.

6.5.5. **Failure to Meet Guarantee.** If Accuray fails to achieve a 12-month Uptime percentage meeting the foregoing Guarantee in any year, the patient volume for that year set forth in Schedule 2 will be decreased by one patient for every percentage point or fraction thereof that the actual Uptime percentage is below the guaranteed Uptime percentage. The first 12-month period will start as of the Commencement Date.

6.6. **Exceptions.** All obligations of Accuray under this Section 6 shall cease in the event of:

6.6.1. Damage from fire, accident, abuse, floods, lightning, natural disasters or other calamities commonly defined as "Acts of God".

6.6.2. The intentional abuse of the System or negligence by Institution.

6.6.3. System hardware or software alterations not authorized by Accuray including any move of the System from its installation site (other than by Accuray or at the express written direction of Accuray).

6.6.4. Use of the System for other than its intended and authorized purposes, or in a manner not consistent with Accuray's operating instructions, including maintenance of the necessary operating environment and line current conditions, and the failure of Institution to cure such matter within thirty (30) days of actual written notice thereof from Accuray.

7. IMPROVEMENTS AND UPGRADES

7.1. **Definitions**

7.1.1. **Bug Fix.** "Bug Fix" means an error correction or minor change in the existing software and/or hardware configuration that is required in order to enable the existing software and/or hardware configuration to perform to the existing functional specification(s).

7.1.2. **Update.** "Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional specification(s) of that particular product. Such Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the product. For example, an Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Updates of the software.

7.1.3. **Upgrade.** "Upgrade" means a release of the software or a change to the existing hardware containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and is designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Upgrade of software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Upgrades of the software.

7.1.4. **New Version/New Product** means a release of the software or a change to the hardware that may or may not work with the existing software and/or hardware configuration, but that in its totality requires, in Accuray's sole opinion, enough change to the software and/or hardware configuration to be considered a new version or new product.

7.2. **Bug Fixes and Updates.** Accuray shall provide and install at no additional charge to Institution any Bug Fixes and Updates for software that is included as an integral part of the System, as well as any Upgrades relating to safety.

7.3. **Upgrades.** Accuray shall provide to Institution and install all hardware and software Upgrades relating to safety or throughput that have major new features as soon as reasonably practical after such Upgrades are regularly and commercially available for sale in the United States, provided that:

7.3.1. Institution is generating patient volumes which are equal to or greater than the Best Effort Upgrade Case Volumes set forth in Schedule 2; and

7.3.2. Accuray reasonably believes that the Upgrades will cost-effectively help improve patient treatment or patient volumes.

7.4. **Exclusions.** Upgrades do not include New Product/New Version offerings by Accuray, nor improvements made to the linac, the robot, the workstation, the imaging system, the patient couch, and the CyRIS family of products. This exclusion does not mean, however, that portions of such components would not qualify under the definitions of Upgrade, and such items may be offered as an Upgrade at Accuray's sole discretion.

7.5. **Payment for Upgrades.** Upgrades provided pursuant to Section 7.3 shall be valued at Accuray's list price. Institution shall pay for such Upgrades only if and when Institution exercises its purchase option under Section 10 below, and then at their respective depreciated values. The depreciated value of the Upgrades will be added to the Buyout Price listed in Schedule 3.

7.6. **Depreciation.** Upgrades shall be depreciated on a monthly (including portions of a month, if applicable) straight-line basis calculated from the date of installation of such Upgrades, as to each such Upgrade. Hardware Upgrades shall be depreciated over a five (5) year period, and software Upgrades over a three (3) year period. In the event Institution exercises its purchase option under Section 10, the Buyout Price listed in Schedule 3 shall be increased by the depreciated value of each Upgrade on the effective date of the Buyout.

7.7. **Purchase of Upgrades.** If Institution does not meet its Best Effort Upgrade Case Volumes, then Institution may purchase Upgrades at Accuray's then current list price for Upgrades. If Institution purchases an Upgrade then it will not be added to the Buyout Price listed in Schedule 3.

7.8. **Improvements.** If and to the extent that Institution or its employees or affiliated physicians participate in the development of anything which could be considered an improvement or enhancement to the Equipment, including but not limited to Bug Fixes, Updates, Upgrades, and New Versions/New Products, Institution agrees to maintain the confidentiality of such improvements and enhancements, to assist Accuray in obtaining patent, copyright, and other appropriate intellectual property protection thereof, and to assign and to cause such individuals to assign to Accuray (including formal instruments of assignment) all such improvements and enhancements. All such improvements and enhancements shall be and remain the sole and exclusive property of Accuray.

8. PAYMENT OPTIONS

8.1. **Revenue Sharing.** Institution will select one of the Revenue Share alternatives (Plan A or Plan B) listed below by initialing the appropriate box. The Shared Revenue consists of the collected Technical Fees, as defined below in Section 8.2.2, which are then split between Institution and Accuray according to the Revenue Share Plan selected by Institution (the "Revenue Share").

Revenue Share Plans

Select Plan A	Plan A	
	Revenue Share Institution/Accuray	Total Payments to Accuray
	50%—50%	50% split on all collections for Term of Agreement
Select Plan B	**Plan B**	
	Revenue Share Institution/Accuray	**Total Payments to Accuray**
	30%—70%	Up to first $1,500,000
	50%—50%	over $1,500,000, and up to $5,000,000 cumulative
	70%—30%	over $5,000,000 cumulative

8.2. **Fees Definitions**

8.2.1. **Treatment Services.** "Treatment Services" shall be defined as all services provided using the Equipment including but not limited to: treatment planning services, treatment delivery services, and other such services that may become available in the future, for which reimbursement is sought.

8.2.2. **Technical Fees.** "Technical Fees" shall be defined as all payments received by Institution for the Treatment Services being provided on the Equipment, excluding the "professional" services collected for the physician surgeons and radiation oncologists administering or prescribing the treatment ("Professional Fee").

8.3. **Fee Allocations**

8.3.1. **"Global" Billing.** In the event of any "global" billing, defined as any bill that requires a combined billing for the technical and professional components, the reimbursement will be allocated 74% to the Technical Fee and 26% to the Professional Fee.

8.3.2. **Pooled Rate.** In the event of that the payment to Institution for CyberKnife treatment services are unspecified and fall under a reimbursement payment methodology that is derived from a bundled, pooled, "hold back" or "capitated" arrangement, the reimbursement allocated to the technical and professional components of the CyberKnife treatment shall consist of a "Pooled Rate."

8.3.2.1. The Pooled Rate shall be calculated on each anniversary of the Commencement Date for the succeeding year.

8.3.2.2. For each year following such Commencement Date, the Pooled Rate shall be equal to the average reimbursement for CyberKnife treatment received by Institution from all payers of unbundled rates during the preceding year.

8.3.2.3. For the first year following the Commencement Date, the Pooled Rate will be an estimated rate, calculated 90 days after the Commencement Date, to allow Institution time to negotiate rates with insurance carriers for that first year.

8.3.3. **Inpatient Rate**. In the event that a patient is treated with the Equipment while being an inpatient at Institution when such services are rendered and the Institution is paid on a DRG-like basis, Institution agrees to pay Accuray according to the payment methodology outlined in Paragraph 8.1.

8.4. **Minimum Monthly Payments.** Starting with the first (1st) month following the Commencement Date, in the event that the Revenue Share payment to be made by Institution to Accuray is not equal to or greater than $35,000, Institution shall make a minimum monthly payment of at least $35,000 per month, notwithstanding the actual amount of any fees collected by Institution with respect to such month (the "Minimum Monthly Payment"). The Minimum Monthly Payments will be due on the third (3rd) business day of each month and shall continue for the Term of this Agreement. For the avoidance of doubt, and by way of example, if the Commencement Date is on any day of the month of May, the Minimum Monthly Payment shall commence on the 15th day of June.

8.5. **Revenue Share Payments.** Revenue Share payments are due for the entire length of this Agreement. Revenue Share payments shall be reduced by the Minimum Monthly Payment made for that particular month in which the revenue was generated (i.e., the month when the collections were received). If the Revenue Share due to Accuray in any given month is less than the Minimum Monthly Payment, then Institution shall pay the Minimum Monthly Payment in that month only.

8.6. **Funding.** Institution understands that Accuray may obtain funding to invest in the placement program and may use the CyberKnife and Institution's minimum and other payments as collateral (or the title of the CyberKnife may be transferred to a third party as part of a financing agreement). Institution agrees to provide reasonable information to allow this financing.

9. PAYMENT TERMS

9.1 **Payment.** On or before the close of business on the third (3rd) business day of each month following the month that contains the Commencement Date, however, no later than sixty (60) days following the Delivery Date, Institution shall pay to Accuray the greater of the Minimum Monthly Payment for the prior month (subject to Section 8.4) or Accuray's Revenue Share for the prior month.

9.2. **Best Efforts.** Institution agrees to use its best efforts to obtain prompt payment, from patients and third-party payers and at the rates lawfully available in the market or markets served by Institution, for services rendered by Institution utilizing the Equipment. Accuray's personnel who have knowledge and experience in obtaining reimbursement for such services may assist Institution in strategizing as to such reimbursement, but Institution shall be responsible for applying for and obtaining such payment and reimbursement. Nothing in this paragraph is intended to suggest that either party will do anything inconsistent with the anti-fraud provisions of healthcare laws or regulations.

9.3. **Reporting.** On or before the close of business on the third (3rd) business day of each calendar month following the month that contains the Commencement Date, Institution shall report to Accuray all Treatment Services performed utilizing the Equipment, all amounts billed therefor during the previous month, and all amounts collected during the previous month.

9.4. **Records and Audit.** Upon the request of Accuray, and subject to a Business Associate Agreement, if any, Institution shall provide to Accuray all documentation in its possession supporting calculation of any Payment or Payments. If and to the extent Accuray reasonably deems it necessary, Institution shall provide patient by patient information, redacted only to the extent required by a Business Associate Agreement, if applicable. Accuray shall have the right to audit the books and records of Institution as they relate to the calculation of any Payment or Payments. Any audit disclosing a Payment which is less than 5% lower than it should have been shall be at the expense of Accuray. Any audit disclosing a Payment which is

5% or more lower than it should have been shall be at the expense of Institution. In the event that Accuray wishes to audit Institution's books and records, then Accuray and Institution will agree on a mutually acceptable date and time for such audit (the "Audit Date"). Once the Institution and Accuray have agreed upon the Audit Date, Accuray will incur expenses associated with the audit, for example travel to the site, preparation, auditor's time and expenses, etc. Should Institution not be prepared to proceed with the audit on the Audit Date, then, notwithstanding any provisions in this Section 9.4 to the contrary, Institution shall promptly reimburse Accuray for any reasonable expenses incurred by Accuray including down time and travel expenses of the Accuray auditor.

9.5. **Financial Statements**. If requested in writing by Accuray, Institution will provide recent audited or certified financial statements within fourteen (14) calendar days.

9.6. **Payment Due Date.** Institution will provide Accuray the previous month's billing and collection statements and any other relevant statements by the third (3rd) business day of each month, together with payments of the Minimum Monthly Payment or Revenue Share payments due to Accuray in that month.

9.7. **Taxes.** The Payments described in Section 8 above are exclusive of taxes (e.g. sales, use, rental or similar taxes), duties, license or other fees, etc. If the use or possession of the Equipment by Institution pursuant to this Agreement results in the imposition of any taxes, duties, or other fees, or requires the issuance of any permits or licenses, such taxes, duties or fees (other than taxes upon Accuray's net income) shall be paid, and such permits and licenses applied for and maintained, by Institution. Any sales, use, rental or similar tax computed on the basis of the Payments and required to be collected by Accuray shall be paid by Institution with and in addition to the related Payment.

9.8. **Late Fees.** Institution shall pay Accuray a late fee of 2% on each Payment made after the Payment Due Date, as well as interest at the rate of 1% per month (or the maximum rate that as is permitted by applicable laws, if less) from the Payment Due Date to the date it was received by Accuray.

9.9. **Options.** Institution agrees that the placement program does not cover options, additional equipment, bunker expenses, calibration and quality assurance equipment (such as phantoms) or consumables (such as fiducials).

10. TERM AND TERMINATION

10.1. **Term.** The duration of this Agreement is for five (5) years from the Commencement Date ("Term"). Institution has an option to terminate, extend for a period of years, or buyout this Agreement after five (5) years.

10.2. **Termination**

10.2.1. **Option to Terminate.** Either party may terminate this Agreement after the fifth year with 180 days written notice.

10.2.1.1. If Accuray terminates, Accuray pays for dismantling and shipping costs back to Accuray.

10.2.1.2. If Institution terminates, Institution pays for dismantling and shipping costs back to Accuray.

10.2.2. **Termination for Delay.** Time is of the essence. Accuray may terminate this Agreement if Institution is not ready for installation of the Equipment within two (2) months of

Delivery Date, and Institution may terminate this Agreement if Accuray is not able to ship the Equipment within two (2) months of Delivery Date.

10.2.3. **Service on Termination.** The Equipment shall be returned to Accuray in the same condition, less normal wear and tear, as when delivered to Institution. The costs of any repairs or maintenance (other than that assumed by Accuray in Section 6 of this Agreement) required to give full effect to the intent of the provisions of this Section 10.2.4 shall be borne by Institution and all such repair or maintenance shall be completed prior to return of the Equipment to Accuray.

10.3. **Extension**

10.3.1. **Automatic Extension.** After the fifth year, this Agreement will automatically renew for additional one (1) year periods under the same terms, unless either party elects to terminate the Agreement as set forth in Section 10.2.1.

10.3.2. **Option to Extend for a Period of Years.** The parties may elect, by written agreement entered into 180 or more days before the fifth anniversary of the Commencement Date, to extend the Term of this Agreement for an additional period of years to be agreed upon between the parties.

10.4. **Buyout**

10.4.1. **Option to Buyout.** On any anniversary following year five (5), Accuray will provide an exit strategy enabling Institution to buy out Accuray's interest in this program including the CyberKnife G4 at the predetermined price and terms set forth in Schedule 3, with 180 days written notice.

10.4.2. **Service on Buyout.** Accuray agrees that, beginning with the effective date of purchase of the Equipment, and provided Institution has done nothing to make the Equipment ineligible for ongoing service, Accuray will be willing to provide to Institution, on its then-standard terms and at its then-standard pricing, a Service Plan covering the Equipment. Institution understands that, as presently configured, some but not all of Accuray's Service Plans include benefits comparable to those set forth in Sections 6 of this Agreement and Accuray makes no representations as to what type or types of service plans may or may not be offered at the time of purchase.

10.5. **Payment at Termination or Buyout.** Institution will pay Accuray the amount due for all services performed using the Equipment to the date of termination or buyout, calculated based on expected billings and expected collections. Payment will be made within thirty (30) days. The difference between the estimate paid and the actual amount (based on actual collections and Minimum Monthly & Revenue Share payments) will be calculated and paid (by the appropriate party) within thirty (30) days of the end of each subsequent calendar quarter.

10.6. **Survival.** Upon termination the parties' obligations under this Agreement shall cease effective upon the effective date of termination or buyout of the Equipment by Institution, except for those set forth in Sections 4.6, 5, 9.4, 9.7, 10.2.3, 11.2, 12, 13, 15, 16, 17, and 19.2 of this Agreement.

11. COMPLIANCE WITH LAW

11.1. **Compliance by Parties.** Institution and Accuray shall each do all acts necessary to comply with, and shall cause their respective officers, directors, employees, contractors and agents to comply with, any and all federal, state, and local laws and regulations applicable to each of them. This provision includes but is not limited to legal requirements of privacy of patient-

specific records, which is discussed more specifically in Section 4.6 above and Section 12 below.

11.2. **Change in Law with Adverse Consequences**

11.2.1. **Change in Law.** As used herein, "Change in Law" shall mean: (i) any new legislation enacted by the federal or any state government; (ii) any third-party payer's or any governmental agency's (including but not limited to the Internal Revenue Service, the Office of the Inspector General of the U.S. Department of Health and Human Services, and comparable state agencies with jurisdiction over the subject matter of this Agreement), passage, issuance or promulgation of any new rule, regulation or guideline or interpretation of an existing law, rule, regulation or guideline; or (iii) any judicial or administrative body's issuance of any order or decree.

11.2.2. **Adverse Consequences.** As used herein, "Adverse Consequence" shall mean a Change of Law that prohibits, invalidates, restricts, limits, renders unenforceable or otherwise affects a Party's rights or obligations hereunder in a material manner or otherwise makes it desirable for either Party to restructure the relationship established hereunder because of material adverse legal consequences expected to result from such Change of Law.

11.2.3. **Good Faith Revision.** Notwithstanding any other provision of this Agreement, if during the term hereof any Change of Law results in an Adverse Consequence, Institution and Accuray shall make good faith efforts to revise this Agreement in order to avoid such Adverse Consequence(s). Where such Change in Law results in any particular provision of this Agreement becoming invalid or unenforceable, the parties agree to first attempt to revise the Agreement so that the remaining provisions shall be enforceable and binding except where severance of the invalid or unenforceable provision substantially changes the rights and duties of the parties.

11.2.4. **Termination.** If the Parties are unable to revise this Agreement so as to avoid such Adverse Consequence(s) following sixty (60) days of good faith negotiation, and severance of the invalid or unenforceable provision substantially changes the rights and duties of the parties, then the party adversely affected may terminate this Agreement upon written notice to the other.

12. PATIENT INFORMATION

12.1. In performing its obligations under this Agreement, Accuray may receive from Institution, or create or receive on behalf of Institution, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accuray shall use Patient Information only as necessary to provide the services to Institution as set forth in this Agreement. Accuray shall comply with all Federal and state laws, rules and regulations relating to the confidentiality of Patient Information, including the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

13. CONFIDENTIALITY

13.1. **Confidential Information.** All drawings, designs, specifications, manuals and programs furnished to the Institution by Accuray shall remain the confidential and proprietary property of Accuray. All such information, except as may be found in the public domain, shall be held in confidence by Institution and shall not be disclosed by Institution to any third parties.

Institution agrees not to disclose any such information to any third party which is not bound by a comparable obligation of confidentiality to Accuray. It is understood and agreed that this obligation does not apply to information which: (a) is in the public domain, through no breach of this or such other confidentiality agreement; (b) was in the possession of Institution at the time of the initial disclosure by Accuray as evidenced by documents in Institution's files predating such disclosure; (c) was received by Institution from a third party, before or after the time of disclosure by Accuray, so long as such information was not disclosed by such third party directly or indirectly in violation of a confidentiality agreement with Accuray; or (d) is required to be disclosed by Institution by law or by virtue of a final court order, provided that Institution must promptly notify Accuray when such disclosure is sought, and Accuray must be afforded an opportunity to oppose the request for disclosure.

13.2. **Confidentiality.** Accuray agrees to keep confidential all site specific collection information. Aggregated information may be used by Accuray in the normal course of its business. Institution agrees to keep confidential the terms and conditions of this Agreement within Institution and its parent organization, as applicable.

13.3. **Remedies.** Since unauthorized disclosure of Confidential Information will diminish the value to Accuray of the proprietary interests that are the subject of this Agreement, if Institution breaches any of its obligations hereunder, Accuray shall be entitled to all available remedies in equity or in law to protect its interests therein, including but not limited to injunctive and/or monetary relief.

14. NON-COMPETE

14.1. During the Term of this Agreement, Institution shall not own, operate, or have any interest in any stereotactic radiosurgery or radiotherapy device or system, whether at the site at which the Equipment is located or elsewhere, which is not already in service at the time of the delivery of the Equipment to Institution, other than the CyberKnife G4 Robotic Radiosurgery System.

15. INDEMNITY AND INSURANCE

15.1. Accuray agrees to indemnify, hold harmless, and defend Institution from and against any and all liability to third parties resulting from the failure of the Equipment, when properly operated by Institution in accordance with the written specifications provided by Accuray to Institution, in such proportion as reflects its relative fault therefore, but shall have no other or further responsibility with respect to any such damage or injury.

15.2. Institution agrees to indemnify, hold harmless, and defend Accuray from and against any and all liability to third parties arising out of Institution's use of the Equipment except if and to the extent such liability arises out of a failure described in Section 15.1 above, in such proportion as reflects its relative fault therefore, but shall have no other or further responsibility with respect to any such damage or injury.

15.3. For the Term of this Agreement, Accuray shall, at its sole cost and expense, maintain product liability and property damage insurance covering the Equipment with the following minimum coverage: Basic liability and product liability of $1,000,000; equipment coverage at replacement value; and a liability umbrella policy of $3,000,000. A certificate evidencing such coverage shall be provided by Accuray to Institution upon request by Institution.

15.4. Institution shall maintain comprehensive general liability insurance covering its services provided with the Equipment and its premises where the Equipment is located and shall require that each physician who provides treatment utilizing the Equipment, and each other

person who performs other medical services on patients referred for treatment with the Equipment, shall maintain professional liability insurance in such amounts and in such form as is customary for such persons in their respective professional fields as well as in Institution's community. Upon request by Accuray, Institution shall furnish Accuray evidence of such insurance coverage.

16. WARRANTIES

16.1. There are no warranties provided under this Agreement except as expressly stated in Section 6.5.

16.2. ACCURAY EXPRESSLY EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION, UNLESS OTHER WARRANTIES ARE EXPRESSLY AGREED TO IN WRITING BY ACCURAY.

17. LIMITATION OF LIABILITY

17.1. ACCURAY'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THREE MILLION DOLLARS ($3,000,000). IN NO EVENT WILL ACCURAY BE LIABLE TO INSTITUTION FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES OR DOWNTIME, SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

18. BREACH AND REMEDIES

18.1. **Breach.** The occurrence of any of the following shall constitute an event of breach hereunder ("Event of Breach"):

18.1.1. **Default in Payments.** If Institution shall fail to pay all or any portion of any Payment, when and as the same shall come due and payable, whether at the due date thereof or by acceleration, or shall fail to make any other payment required by this Agreement, and such failure continues for a period of ten (10) business days after receipt of notice; or

18.1.2. **Other Breach.** If either party shall breach or shall be in default under any of the terms and conditions of this Agreement and such breach or default shall not be cured within thirty (30) days after receipt of notice with respect thereto from the non-breaching party; or

18.1.3. **Bankruptcy, Insolvency, etc.** If Institution is subjected to any proceeding under the Bankruptcy Act or is insolvent or if any substantial part of Institution's property is subjected to any levy, seizure, assignment, application, or sale for or by any creditor or government agency; or

18.1.4. **Licenses.** If any license or other required government approval of Institution is at any time suspended, terminated, revoked or limited in any manner that has a material adverse effect on the use of the Equipment.

18.2. **Remedies.** If any Event of Breach shall occur and be continuing, *the non-breaching party may*, at its option, exercise any one or more of the rights and remedies as follows:

18.2.1. Accuray or Institution may terminate this Agreement.

18.2.2. Accuray or Institution may take any action at law or in equity to collect any or all amounts then due and thereafter to become due under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Accuray or Institution under this Agreement.

18.2.3. Accuray may accelerate and declare to be immediately payable the entire balance of all Payments and all other amounts due and owing under the Agreement plus the sum of all Payments and other amounts reasonably likely, based upon the previous six months' Payments, to become payable during the balance of the Term of this Agreement.

18.2.4. Accuray may, directly or by its agent, and without notice or liability or legal process, enter upon any premises where the Equipment may be located, take possession of and remove the Equipment (any damages occasioned by such taking of possession and removal being waived by Institution).

19. GENERAL PROVISIONS

19.1. **Press Releases.** Accuray and Institution shall each have the right to announce the installation to the press and shall provide copies of any press release to the other party so that they have a reasonable chance to provide input on the announcement.

19.2. **Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this Section.

To Accuray:

Accuray Incorporated
Attention: Chief Financial Officer
1310 Chesapeake Terrace
Sunnyvale, CA 94089
with cc to: General Counsel

To Institution:

19.3. **Trademarks.** Accuray is the owner of the trademark CyberKnife®, and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

19.4. **Waiver.** A waiver by either party of a breach or failure to perform under this Agreement shall not constitute a waiver of any subsequent breach or failure of the same or any other provision of this Agreement.

19.5. **Force Majeure.** Neither party shall be required to perform any obligation hereunder if, while, and to the extent such performance is prevented by Act of God, war, civil disobedience, strike, work stoppage, transportation conditions, laws, regulations, ordinances or acts of any governmental agency or any other cause which is beyond the reasonable control of such party. Subject to the more specific provisions of Section 1 above, all dates of

performance herein shall be extended for a period equal to any period during which performance is so suspended.

19.6. **Assignment And Subletting.** Except with Accuray's prior written consent, Institution may not assign or otherwise transfer or pledge all or any part of its rights or obligations hereunder and any attempted assignment or other transfer or pledge shall be void. Accuray may assign this Agreement, without Institution's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Accuray's assets or the sale of that portion of Accuray's business to which this Agreement relates.

19.7. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

19.8. **Applicable Law.** This Agreement shall be interpreted, and disputes related to it resolved, in accordance with the substantive laws of the State of California, not including its conflict of laws or choice of law provisions, in a court of competent jurisdiction, in Santa Clara County, State of California, and in no other place, provided that, in Accuray's sole discretion, such action may be heard in some other place designated by Accuray (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Institution hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Institution more than one (1) year after the cause of action has occurred.

19.9. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

19.10. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

19.11. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, thereunto duly authorized, on the Effective Date. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

[NAME OF INSTITUTION]	**ACCURAY INCORPORATED**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: _____ Dated: _____

General Counsel, Accuray Incorporated

Schedule 1

CyberKnife G4—Placement Equipment

List price of this configuration is $4,145,000

ROBOTIC TREATMENT DELIVERY SYSTEM

Image-Guidance Components

- Target Locating Subsystem (TLS)—Employs two x-ray imaging systems providing a pair of orthogonal images at each treatment node. The images are digitized and compared to images synthesized from the patient's CT data. The TLS subsystem provides real-time precision information about the location of the treatment target, including compensation for small transitional movements of the patient or the target during the treatment process.

- In-Floor Amorphous Silicon X-Ray Detectors—The imaging system uses two solid-state amorphous silicon sensor panels (40cm × 40 cm) built into the floor of the treatment room. Discrete photodiodes are arranged in a 1024 × 1024 pixel matrix. The resolution results in a pitch of 400 um. Unlike traditional imaging detectors used prior to patient treatment only, the CyberKnife state-of-the-art detectors provide direct digital output throughout treatment.

- Target Locating System Control Console (TLSCC) and Computer—This unit controls the diagnostic X-ray sources and amorphous silicon imaging panels in acquiring images, as well as conducting image correlation to determine patient displacement during treatment.

Linear Accelerator Components

- 600 MU/min. Linear Accelerator (Linac)—The Linac consists of an electron gun and a series of microwave cavities under vacuum. The X-band Linac provides a collimated beam of 6 MV X-rays. The compact size allows unique manipulation by the intelligent robotic system that provides hundreds of different isocentric and non-isocentric beam directions allowing high conformality and avoidance of critical structures.

- X-Ray Head—The assembly contains the Linac, magnetron, microwave wave-guide components, the pulse transformer, water circulating connections, and a gas pressurizing connection for the wave-guide.

- Secondary Collimators—(in millimeters: 5, 7.5, 10, 12.5, 15, 20, 25, 30, 35, 40, 50, 60, pinhole and blank) Interchangeable collimators allow for greater flexibility and conformability during the treatment planning process.

- Modulator—This assembly contains the high voltage (HV) pulse-generating circuits that drive the Radio Frequency (RF) system located in the X-ray head.

- Chiller—The chiller cools the Linac and consists of a re-circulating pump, a water reservoir, and a refrigeration unit with chiller and temperature regulating control (used to maintain a stable operating temperature), water temperature indicator and status lamps. This is a closed loop system that does not require external facility connections.

Robotic Manipulator

- Unlike any other radiosurgery system in the world, Accuray's robotic system (manipulator) carries and aims the Linac providing automated positioning in six-degrees of freedom to within 0.12mm precision. It provides greater reach and flexibility than traditional gantry style linacs.

Axum® Treatment Couch & Automatic Patient Positioning System

- Automatic patient positioning system that is fully integrated with the image-guidance system to enable accurate alignment of patients in one step.

Power Distribution Unit (PDU)

- The Power Distribution Unit is the AC power source for the entire CyberKnife® G4 system. It uses a 208VAC, 3 phase, 150 amp input.

TREATMENT PLANNING SYSTEM

CyRIS™ MultiPlan™ Treatment Planning Computer

- The CyRIS MultiPlan planning system, one of the newest offerings from Accuray's CyRIS family of products, combines the latest innovations in dose optimization technology and automated treatment planning tools to enable clinicians to provide radiosurgery treatments of unprecedented accuracy and effectiveness. This planning system combines forward and inverse, isocentric and non-isocentric and conformal and non-conformal planning methods, advanced image fusion capabilities for CT, MR, PET and 3D Angiography images, 2D and 3D auto segmentation and contouring tools and a powerful 3D graphical evaluation options into an easy-to-use, Windows®-based work station. With its unique real-time optimization feedback process, MultiPlan allows clinicians to make adjustments during plan optimization, an advancement that significantly accelerates the creation of treatment plans.

CyRIS™ InView™ Workstation

- A remote image fusion and contouring station designed to streamline the pre-planning step of image preparation and tumor volume definition by enabling the user to complete this critical step within minutes from the hospital or remotely. One CyRIS InView Workstation is included.

CK Remote™ Open Architecture

- Import DICOM RT image sets (CT, MR and PET) and ROI

CLINICAL APPLICATION MODULES

Synchrony™ Respiratory Tracking System

- The CyberKnife System with the Synchrony Respiratory Tracking System is the only radiosurgery system in the world that identifies tumor position throughout the treatment and synchronizes treatment delivery to the motion of the tumor throughout the respiratory cycle. The Synchrony System permits patients to breathe normally during their treatment, without breath-holding or gating techniques. The System will allow physicians, for the first time, to treat their patients with much tighter margins, no longer having to add significant margins to compensate for a moving target, thus sparing more healthy tissue.

Xsight™ Spine Tracking System

- Xsight™ Spine Tracking System from Accuray eliminates the need for surgical implantation of uncomfortable radiographic markers, or fiducials, in the delivery of radiosurgery treatments along the spinal column. Xsight relies on the bony anatomy of the spine to automatically locate and track tumors along the spinal column.

DATA MANAGEMENT SYSTEMS

Patient Archive and Restore System

- The Patient Archive and Restore System includes a PC workstation that is networked to the CyberKnife system patient database. It allows archiving of patient records either on-line to the PC's hard drive or off-line to DVD media, as well as later restoring of patient records back into the CyberKnife system patient database for possible follow up treatment. Both of these processes occur as background processes freeing up the Treatment Delivery and Treatment Planning Systems from performing these tasks, enhancing the overall clinical workflow.

Schedule 2

Best Effort Case Volumes

	Basic Service Case Volumes	Upgrades Case Volumes
Year 1	85	110
Year 2	125	150
Year 3	160	200
Year 4	200	240
Year 5	240	275
Subsequent	240	300

Schedule 3

Buyout Option

No Buyout for the first five (5) years. Institution can buy out Accuray's interest in this program and the Equipment at end of:

Year	Buyout Price
5	$ 2,910,000
6	$ 2,530,000
7	$ 2,120,000
8	$ 1,740,000
9	$ 1,370,000
10 and subsequent	$ 950,000

In the event that Institution exercises its Buyout Option, the Buyout Price shall be increased by the depreciated list price on the effective date of the buyout of each upgrade. Hardware upgrades shall be depreciated on a monthly basis (including portions of a month, if applicable) over a five (5) year period, and software upgrades over a three (3) year period.

The Buyout Price is based upon Accuray's list price for the equipment listed in Schedule 1, if additional equipment is added prior to installation, then the Buyout Price for the Equipment shall be adjusted based upon Accuray's list price of that additional equipment at the time of installation.

QuickLinks

CYBERKNIFE G4 PLACEMENT AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.44

Separation Agreement and Release

31 March 2006

John W. Allison

Dear **John**:

This Separation Agreement and Release ("Agreement") is made and entered into by and between Accuray, Inc. (which together with its affiliates and its respective shareholders, directors, officers, employees, representatives, predecessors, successors and assigns are collectively referred to as "Employer") and John W. Allison ("Employee").

Employer and Employee intend by this Agreement to settle all legal rights and obligations arising out of or resulting from the employment relationship and its termination.

1. ***Termination of Employment.***

a) Employer and Employee agree that the Employee's employment with Employer will be terminated effective **31 March 2006** (the "Termination Date").

b) The Employee hereby confirms his resignation of all positions that he has held as an officer of the Company and all subsidiaries of the Company, and the Company confirms its acceptance of such resignations, effective **31 March 2006** (the "Termination Date").

2. ***Separation Benefits.*** In consideration for your signing this agreement, you will receive: your Treo communication device; your computer laptop with computer display; six (6) months of Severance Pay, equivalent to $102,500; a Separation Bonus of two (2) weeks salary for every year of service, equivalent to $17,083; a lump sum severance payment of $35,000 and Accuray agrees to pay for the first six (6) months of COBRA coverage, (grossed-up by 35% to cover tax withholdings), equivalent to $9,720. All severance pay will be paid net of all appropriate taxes and withholdings.

a) In exchange for the above mentioned benefits, you agree to be available to the Employer for consultation, as needed and to produce documentation by April 10, 2006, which outlines the status of all projects currently underway in the Engineering Department.

b) Accuray will agree to promptly pay the Severance Pay in six (6) monthly installments, commencing on May 1, 2006. The Separation Bonus and COBRA payments would be paid in lump sum assuming agreement to the terms and your signature approval of this Agreement.

3. ***Return of Company Property.*** You have returned to the Company all Company property in your possession.

4. ***Maintaining Confidential Information.*** You will not disclose any confidential information you acquired while an employee of the Company to any other person or use such information in any manner that is detrimental to the Company's interests. Employee understands and agrees that this Agreement is confidential and agrees, except as required by law, not to disclose its terms or the fact of its execution to any other person or entity without the prior written consent of a duly authorized officer of Employer.

5. ***Cooperation with the Company.*** You will cooperate fully with the Company in its 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.

6. ***General Release of the Company.*** You understand that by agreeing to this release you are agreeing not to sue, or otherwise file any claim against, the Company or any of its employees or other

agents for any reason whatsoever based on anything that has occurred as of the date you sign this agreement.

a) On behalf of yourself and your heirs and assigns, you hereby release and forever discharge the "Releasees" hereunder, consisting of the Company, and each of its owners, affiliates, divisions, predecessors, successors, assigns, agents, directors, officers, partners, employees, and insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which you now have or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof, including, without limiting the generality of the foregoing, any Claims arising out of, based upon, or relating to your hire, employment, remuneration or resignation by the Releasees, or any of them, including any Claims arising under Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act, as amended; the Equal Pay Act, as amended; the Fair Labor Standards Act, as amended; the Employee Retirement Income Security Act, as amended; the California Fair Employment and Housing Act, as amended; the California Labor Code; and/or any other local, state or federal law governing discrimination in employment and/or the payment of wages and benefits.

Notwithstanding the generality of the foregoing, you do not release the following claims:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iii) Claims to continued participation in certain of the Company's group benefit plans pursuant to the terms and conditions of the federal law known as COBRA; and

(iv) Claims to any benefit entitlements vested as the date of her employment termination, pursuant to written terms of any Company employee benefit plan.

b) YOU ACKNOWLEDGE THAT YOU ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS 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.

BEING AWARE OF SAID CODE SECTION, YOU HEREBY EXPRESSLY WAIVE ANY RIGHTS YOU MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

c) **In accordance with the Older Workers Benefit Protection Act of 1990, you should be aware of the following:**

i) You have the right to consult with an attorney before signing this agreement;

ii) You have twenty-one (21) days, from 31 March 2006, to consider this agreement;

iii) **You have seven (7) days after signing this agreement to revoke this agreement, and this agreement will not be effective, and you will not receive any of the separation benefits, until that revocation period has expired; and**

7. ***Severability.*** The provisions of this agreement are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

8. ***Voluntary and Knowing Agreement.*** You represent that you have thoroughly read and considered all aspects of this agreement, that you understand all its provisions and that you are voluntarily entering into said agreement.

9. ***Entire Agreement; Amendment.*** This agreement sets forth the entire agreement between you and the Company and supersedes any and all prior oral or written agreements or understanding between you and the Company concerning the subject matter. This agreement may not be altered, amended or modified, except by a further written document signed by you and the Company.

10. ***Non-Disclosure, Public Statements.*** Employee agrees to keep confidential am not to use or disclose to any third party any confidential or proprietary information pertaining to the business of Employer without the prior written consent of a duly authorized officer of Employer. In the event Employee receives or becomes aware of a subpoena or court order requiring such disclosure. Employee will notify Employer within three (3) business days. Employer and Employee further agree they will refrain from (i) making any critical or derogatory statements or comments concerning Employee or Employer or its business or (ii) taking any other action which would negatively affect Employee's or Employer's reputation or business.

If the above accurately reflects your understanding, please date and sign the enclosed copy of this letter in the places indicated below and return that copy to **Paul A. Vagadori** in Human Resources.

Respectfully,

Paul A. Vagadori
Senior Director, Human Resources

Accepted and agreed to on

14 April 2006

Date

/s/ John Allison

John W. Allison
Encl.

8 May 2006

Date

/s/ Euan S. Thomson

Euan S. Thomson, Ph.D.
President and CEO
Accuray Incorporated

8 May 2006

Date

/s/ Chris Raanes

Chris A. Raanes
Chief Operating Officer
Accuray Incorporated

EXHIBIT "A"
ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE

This is an Addendum to the Settlement Agreement and Release ("Agreement") entered into between Accuray, Inc. (referred to jointly as "Employer") and John W. Allisoin ("Employee").

Under the terms of the Parties existing Agreement the Employee releases the Employer from certain claims including but not limited to claims under the Age Discrimination in Employment Act and the Older Worker Benefit Protection Act.

1. In return for the Parties Agreement, you are receiving compensation beyond that which you are otherwise entitled to before entering into this Agreement.

2. You are advised to consult with an attorney before signing this Addendum or electing to continue to be bound to the Agreement.

3. You have twenty-one (21) days from the date you receive this Addendum in which to consider the Agreement including this Addendum.

4. You have seven (7) days following the execution of this Addendum to revoke this Addendum and the previous Agreement between the Parties.

Except as expressly set forth herein, all other terms and conditions of the parties Agreement shall remain in full force and effect. The Agreement and this Addendum set forth all terms and conditions relating to the matters discussed therein and supersede any and all prior agreements and understandings between Employee and Employer concerning the separation of his/her employment from Accuray, Inc.

By my signature below, I acknowledge that I have carefully read and fully understand this Addendum and the Agreement previously issued to me and consent to the terms and conditions set forth in both this Addendum and the Agreement. I further understand and acknowledge that I have seven (7) days from execution of this Addendum to revoke my acceptance of both this Addendum and the previous Agreement I executed.

Dated:	14 April , 2006	/s/ John Allison
		John W. Allison

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Exhibit 21.1

Subsidiaries of the Registrant

Name	State or Jurisdiction of Organization
Accuray International SARL	Switzerland
Accuray Europe SARL	France
Accuray UK, Ltd.	United Kingdom
Accuray Asia Ltd.	Hong Kong

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Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated November 7, 2006, accompanying the consolidated financial statements of Accuray Incorporated contained in the Registration Statement and Prospectus. We consent to the use of the aforementioned report in the Registration Statement and Prospectus, and to the use of our name as it appears under the caption "Experts."

/s/ Grant Thornton LLP

San Francisco, California
November 13, 2006

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[LATHAM & WATKINS LLP LETTERHEAD]

November 13, 2006

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Accuray Incorporated
Registration Statement on Form S-1

Ladies and Gentlemen:

On behalf of Accuray Incorporated, a California corporation (the "Company"), enclosed herewith for filing under the Securities Act of 1933, as amended (the "Securities Act"), is a Registration Statement on Form S-1 (the "Registration Statement") relating to the initial public offering of the Company's common stock. The Company has paid the registration fee of $24,610 by wire transfer to the account of the Securities and Exchange Commission (the "SEC") at Mellon Bank as permitted by the Rules under the Securities Act.

In connection with the review of the Registration Statement by the staff of the SEC (the "Staff"), the Company respectfully brings to the Staff's attention that it previously consulted with the Office of the Chief Accountant of the SEC within the Division of Corporation Finance regarding the appropriate GAAP accounting for a transaction which included unspecified, but committed to, upgrade or enhancement elements in a multiple element sale transaction (the "Accounting Treatment"). Between April 5, 2005 and August 25, 2005, the Company and the Office of the Chief Accountant had various discussions regarding the Accounting Treatment. The Company also directs the Staff's attention to the written correspondence regarding the same between the Company and the Office of the Chief Accountant during this period.

Should the Staff have any comments regarding the enclosed Form S-1 or any of the foregoing, please contact the undersigned at (650) 463-2645 or Jean-Marc Corredor of this firm at (650) 463-3031.

Very truly yours,

/s/ LAURA I. BUSHNELL

Laura I. Bushnell
of LATHAM & WATKINS LLP

cc: Accuray Incorporated
Michael W. Hall, Esq.
Jean-Marc Corredor, Esq.

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[LATHAM & WATKINS LLP LETTERHEAD]